

1 Mark P. Wine, SBN 189897
2 Christopher Bright, SBN 206273
3 **McDERMOTT WILL & EMERY LLP**
4 18191 Von Karman Avenue, Suite 400
5 Irvine, California 92612
6 Telephone: (949) 851-0633
7 Facsimile: (949) 851-9348

8 Timothy J. Malloy, Pro Hac Vice
9 David D. Headrick, Pro Hac Vice
10 **McANDREWS, HELD & MALLOY,
11 LTD.**
12 500 West Madison Street, 34th Floor
13 Chicago, Illinois 60661
14 Telephone: (312) 775-8000
15 Facsimile: (312) 775-8100

16 Attorneys for Defendant
17 **ALARIS MEDICAL SYSTEMS, INC.**

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 WESTERN DIVISION

21 ICU MEDICAL, INC.,
22 a Delaware corporation,

23 Plaintiff,

24 v.
25 ALARIS MEDICAL SYSTEMS, INC.,
26 a Delaware corporation,

27 Defendant.

28

ALARIS MEDICAL SYSTEMS, INC.,
29 a Delaware corporation,

CASE NO. SA CV 040689 MRP (V ркx)

DECLARATION OF DAVID D.
HEADRICK IN SUPPORT OF AND IN
OPPOSITION TO DEFENDANT ALARIS
MEDICAL SYSTEMS, INC.'S MOTION
TO COMPEL ICU'S RESPONSE TO
ALARIS'S REQUESTS FOR
PRODUCTION NOS. 9, 10, 11, 23, 27, 38,
39

Date: April 3, 2006
Time: 10:00 a.m.
Judge: Hon. Mariana R. Pfaelzer

Discovery Cutoff Date: March 17, 2006
Pretrial Conference Date: August 28, 2006
Trial Date: October 3, 2006

ICU MEDICAL, INC.,
a Delaware corporation,

Counterclaim-defendant.

BEST AVAILABLE COPY

1 I, David D. Headrick, hereby declare and state as follows:

2 1. I am a board member with the law firm of McAndrews, Held & Malloy and
3 one of the attorneys for ALARIS Medical Systems, Inc. ("ALARIS") in the above
4 captioned action. I am over twenty-one years of age, have personal knowledge of the
5 matters set forth in this declaration, and submit this declaration in support of and in
6 Opposition to Defendant ALARIS Medical Systems, Inc.'s Motion to Compel ICU's
7 Response to Requests for Production Nos. 9, 10, 11, 23, 27, 38, 39.

8 2. Attached as Exhibit 1 true and correct copy of the October 4, 2004 Initial
9 Case Scheduling Order. See also Exhibit 10 below.

10 3. Attached as Exhibit 2 is a true and correct copy of a letter from David
11 D. Headrick to S. Christian Platt, dated September 1, 2005.

12 4. Attached as Exhibit 3 is a true and correct copy of ICU Medical, Inc.'s
13 Responses to Alaris Medical Systems, Inc.'s Requests for Production Nos. 1-46

14 5. Attached as Exhibit 4 is a true and correct copy of a letter from S. Christian
15 Platt to Kurt L. Grossman dated August 6, 2001.

16 6. Attached as Exhibit 5 is a true and correct copy of Third Supplemental
17 Response of Defendant ICU Medical, Inc. to Plaintiff Medex, Inc.'s First Set of
18 Interrogatories (No. 5).

19 7. Attached as Exhibit 6 is a true and correct copy of a letter from Steven J.
20 Nataupsky to Kurt L. Grossman, dated July 8, 1999.

21 8. Attached as Exhibit 7 is a true and correct copy of a letter from S. Christian
22 Platt to David D. Headrick, dated July 6, 2005.

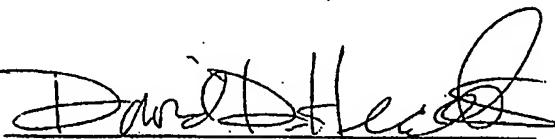
23 9. Attached as Exhibit 8 is a true and correct copy of a letter from S. Christian
24 Platt to David D. Headrick, dated July 11, 2005.

1 10. Attached as Exhibit 9 is a true and correct copy of the Stipulated Protective
2 Order.

3 11. Attached as Exhibit 10 is a true and correct copy of the Court's November 9,
4 2005, modified Case Management Schedule.

5 I declare that the foregoing is true and accurate to the best of my knowledge
6 under penalty of perjury.
7

8 Dated: March 7, 2006


DAVID D. HEADRICK

1 Mark P. Wine, SBN 189897
2 Christopher Bright, SBN 206273
2 **McDERMOTT WILL & EMERY LLP**
3 18191 Von Karman Avenue, Suite 400
3 Irvine, California 92612
4 Telephone: (949) 851-0633
4 Facsimile: (949) 851-9348

5 Timothy J. Malloy, Pro Hac Vice
6 David D. Headrick, Pro Hac Vice
6 **McANDREWS, HELD & MALLOY,**
7 **LTD.**
7 500 West Madison Street, 34th Floor
8 Chicago, Illinois 60661
8 Telephone: (312) 775-8000
9 Facsimile: (312) 775-8100

10 Attorneys for Defendant
11 **ALARIS MEDICAL SYSTEMS, INC.**

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14
15 ICU MEDICAL, INC.,
15 a Delaware corporation,

16 Plaintiff,

17 v.
18 ALARIS MEDICAL SYSTEMS, INC.,
18 a Delaware corporation,

20 Defendant.

21
22 ALARIS MEDICAL SYSTEMS, INC.,
22 a Delaware corporation,

23 Counterclaim-plaintiff,

24 v.
25 ICU MEDICAL, INC.,
25 a Delaware corporation,

27 Counterclaim-defendant.

16 CASE NO. SA CV 040689 MRP (V ркx)

17
18 DECLARATION OF DAVID D.
18 HEADRICK IN SUPPORT OF AND IN
19 OPPOSITION TO DEFENDANT ALARIS
20 MEDICAL SYSTEMS, INC.'S MOTION
20 TO COMPEL ICU'S RESPONSE TO
21 ALARIS'S REQUESTS FOR
21 PRODUCTION NOS. 9, 10, 11, 23, 27, 38,
22 39

23 Date: April 3, 2006
23 Time: 10:00 a.m.
23 Judge: Hon. Mariana R. Pfaelzer

24
25 Discovery Cutoff Date: March 17, 2006
25 Pretrial Conference Date: August 28, 2006
26 Trial Date: October 3, 2006

1 I, David D. Headrick, hereby declare and state as follows:

2 1. I am a board member with the law firm of McAndrews, Held & Malloy and
3 one of the attorneys for ALARIS Medical Systems, Inc. ("ALARIS") in the above
4 captioned action. I am over twenty-one years of age, have personal knowledge of the
5 matters set forth in this declaration, and submit this declaration in support of and in
6 Opposition to Defendant ALARIS Medical Systems, Inc.'s Motion to Compel ICU's
7 Response to Requests for Production Nos. 9, 10, 11, 23, 27, 38, 39.

8 2. Attached as Exhibit 1 true and correct copy of the October 4, 2004 Initial
9 Case Scheduling Order. See also Exhibit 10 below.

10 3. Attached as Exhibit 2 is a true and correct copy of a letter from David
11 D. Headrick to S. Christian Platt, dated September 1, 2005.

12 4. Attached as Exhibit 3 is a true and correct copy of ICU Medical, Inc.'s
13 Responses to Alaris Medical Systems, Inc.'s Requests for Production Nos. 1-46

14 5. Attached as Exhibit 4 is a true and correct copy of a letter from S. Christian
15 Platt to Kurt L. Grossman dated August 6, 2001.

16 6. Attached as Exhibit 5 is a true and correct copy of Third Supplemental
17 Response of Defendant ICU Medical, Inc. to Plaintiff Medex, Inc.'s First Set of
18 Interrogatories (No. 5).

19 7. Attached as Exhibit 6 is a true and correct copy of a letter from Steven J.
20 Nataupsky to Kurt L. Grossman, dated July 8, 1999.

21 8. Attached as Exhibit 7 is a true and correct copy of a letter from S. Christian
22 Platt to David D. Headrick, dated July 6, 2005.

23 9. Attached as Exhibit 8 is a true and correct copy of a letter from S. Christian
24 Platt to David D. Headrick, dated July 11, 2005.

1 10. Attached as Exhibit 9 is a true and correct copy of the Stipulated Protective
2 Order.

3 11. Attached as Exhibit 10 is a true and correct copy of the Court's November 9,
4 2005, modified Case Management Schedule.

5 I declare that the foregoing is true and accurate to the best of my knowledge
6 under penalty of perjury.
7

8 Dated: March 7, 2006

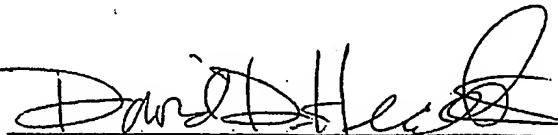

DAVID D. HEADRICK

EXHIBIT 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. SA CV 04-689-ABF(VBK)

Date: October 4, 2004

Title: ICU MEDICAL, INC., V. ALARIS MEDICAL SYSTEMS, INC.PRESENT: THE HONORABLE ALICEMARIE H. STOTLER, JUDGEEllen Matheson
Courtroom DeputyLeslie King
Court ReporterATTORNEYS PRESENT FOR PLAINTIFF(S):
John Benassi
S. Christian PlattATTORNEYS PRESENT FOR DEFENDANT(S):
Christopher Bright
David Headrick
Timothy Malloy

PROCEEDINGS: SCHEDULING CONFERENCE

Cause called. Hearing held. Any amendment to the action or addition of parties shall be filed no later than sixty (60) days from the date of this hearing, pursuant to the Court's Order for Jury Trial. Parties' order for jury trial, order for preparation of jury trial, order governing attorney and party conduct at trial is ordered filed as "Joint CMC Statement." The Court sets the following case management dates:

Discovery Cut-Off	<u>11-04-05</u>
Counterclaimant/Plaintiff's Expert Disclosure	<u>11-11-05</u>
Respondent/Defendant's Expert Disclosure	<u>12-16-05</u>
Counterclaimant/Plaintiff's Rebuttal Reports	<u>01-20-06</u>
Designation of Experts' Cut-Off	<u>02-10-06</u>
Summary Judgment Cut-Off (filing deadline)	<u>02-15-06</u>
Pretrial Conference (2:00 p.m.)	<u>04-24-06</u>
Jury Trial (9:00 a.m.)	<u>05-23-06</u>
Trial Estimate	<u>11 days</u>

DOCKETED ON CI	
OCT 22 2004	
BY	M 0

Court's Order for Jury Trial issued to respective counsel appearing in Court, and attached hereto.

MINUTES FORM 11
CIVIL - GENINITIALS OF DEPUTY CLERK flm

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

SA CV 04-6F9-AHS (V&Kx)

ORDER FOR JURY TRIAL
SETTING DATES FOR:

Discovery Cut-Off:

Pre-Trial Conf.

ત્રણાંક

at 9:00 a.m.

**III. Order for Preparation
for JURY TRIAL,
Proposed Findings of
Fact & Conclusions of
Law, and Scheduling an
Exhibit Conference
Friday before Trial.**

**III. Order Governing Attorney
and Party Conduct at
Trial.**

SCHEDULING:

- 27 1. In General: All motions to join other parties or to
28 amend the pleadings shall be filed and served within sixty

1 (60) days of the date of this order and noticed for hearing within
2 ninety (90) days hereof. All unserved parties shall be dismissed
3 no later than the date set for the Final Pre-Trial Conference.

4 2. Motions for Summary Judgment or Partial Summary
5 Judgment: No motions for summary judgment or partial summary
6 judgment may be filed later than fifteen (15) days after the
7 discovery cut-off date, unless otherwise ordered by Court.

8 3. Discovery Cut-Off: The Court has established a
9 cut-off date for discovery in this action. All discovery is to be
10 completed on, or prior to, the cut-off date. Accordingly, the
11 following discovery schedule shall apply to this case:

12 A. Depositions: All depositions shall be scheduled
13 to commence at least five (5) working days prior to the discovery
14 cut-off date. All original depositions to be used in trial shall
15 be lodged with the Courtroom deputy on the first day of trial or
16 such earlier date as the Court may order.

17 B. Interrogatories: All interrogatories must be
18 served at least forty-five (45) days prior to the discovery cut-off
19 date. The Court will not approve stipulations between counsel that
20 permit responses to be served after the cut-off date except in
21 extraordinary circumstances.

22 C. Production of Documents, etc.: All requests for
23 production, etc., shall be served at least forty-five (45) days
24 prior to the discovery cut-off date. The Court will not approve
25 stipulations between counsel that permit responses to be served
26 after the cut-off date except in extraordinary circumstances.

27 D. Request for Admissions: All requests for
28 admissions shall be served at least forty-five (45) days prior to

1 the discovery cut-off date. The Court will not approve
2 stipulations between counsel that permit responses to be served
3 after the cut-off date except in extraordinary circumstances.

4 E. Discovery Motions: Any motion respecting the
5 inadequacy of responses to discovery must be filed and served not
6 later than ten (10) days after the discovery cut-off date. Whenever
7 possible, the Court expects counsel to resolve discovery problems
8 among themselves in a courteous, reasonable, and professional
9 manner. Consistent resort to the Court for guidance in discovery
10 is unnecessary and may result in the Court appointing a Special
11 Master at the joint expense of the parties to resolve discovery
12 disputes. The Court expects that counsel will strictly adhere to
13 the Civility and Professional Guidelines adopted by the United
14 States District Court for the Central District of California.

15 F. Disclosure of Expert Testimony: The above
16 discovery cut-off date includes expert discovery, unless otherwise
17 ordered by Court, and the Court orders the sequence of disclosures
18 provided by Fed. R. Civ. Proc. 26(a)(2)(C), unless the parties
19 otherwise stipulate in writing and obtain the Court's approval.

20 FINAL PRE-TRIAL CONFERENCE:

21 This case has been placed on calendar for a Final Pre-
22 Trial Conference pursuant to Fed. R. Civ. P. 16. Strict compliance
23 with the requirements of the Fed. R. Civ. P. and Local
24 Rules are required by the Court.

25 //

26 //

27 //

28 //

1
2 **ORDER FOR PREPARATION FOR JURY TRIAL AND SCHEDULING EXHIBIT**
3 **CONFERENCE FRIDAY BEFORE TRIAL: MOTIONS, INSTRUCTIONS, AND**
4 **EXHIBITS**

5 The Court ORDERS that all counsel comply with the
6 following in their preparation for trial:

7 1. **MOTIONS IN LIMINE:**

8 All motions in limine must be filed and served a minimum
9 of forty-five (45) days prior to the scheduled trial date. Each
10 motion should be separately filed and numbered. All opposition
11 documents must be filed and served at least twenty (20) days prior
12 to the scheduled trial date. All reply documents must be filed and
13 served at least ten (10) days prior to the scheduled trial date.

14 All motions in limine will be heard on the scheduled
15 trial date, unless the Court otherwise orders.

16 2. **JURY INSTRUCTIONS, VERDICT FORMS, and VOIR DIRE:**

17 Plaintiff shall serve plaintiff's proposed jury
18 instructions and verdict form on defendant. Defendant shall serve
19 on plaintiff defendant's objections to plaintiff's instructions and
20 verdict form, together with any alternative verdict form and any
21 additional instructions defendant intends to offer. Counsel are
22 ordered to meet and confer to attempt to come to agreement on the
23 proposed jury instructions and verdict forms.

24 Counsel shall file with the Court a JOINT set of jury
25 instructions on which there is agreement. Defendant's counsel has
26 the burden of preparing the joint set of jury instructions. At the
27 same time each party shall file its proposed jury instructions
28 which are objected to by any other party, accompanied by points and

1 authorities in support of those instructions.

2 Jury instructions are to be filed with the Clerk and
3 served on opposing counsel in compliance with Local Rule 51-1.

4 At the same time, counsel must furnish to the assigned
5 Courtroom Deputy Clerk a diskette of proposed jury instructions
6 containing only the text of the proposed instructions so that
7 unannotated copies may be submitted to the jury during its
8 deliberations. Counsel may submit the proposed instructions on a
9 3½" diskette compatible with WordPerfect® 7.0 or later generations
10 of WordPerfect®.

11 Objections to proposed jury instructions must be filed
12 and served in compliance with Local Rules 51-5 and 51-5.1.

13 **Voir Dire:** At least four (4) court days prior to trial,
14 each counsel shall file with the Clerk and serve on opposing
15 counsel any special questions requested to be put to prospective
16 jurors on voir dire.

17 3. TRIAL EXHIBITS:

18 Counsel are to prepare their exhibits for presentation at
19 the trial by placing them in binders that are indexed by exhibit
20 number with tabs or dividers on the right side. Counsel shall
21 submit to the Court an original and one copy of the binders. The
22 exhibits shall be in a three-ring binder labeled on the spine
23 portion of the binder showing both the volume number and the
24 exhibit numbers and contain an index of each exhibit included in
25 the volume. Exhibits must be numbered in accordance with Fed. R.
26 Civ. P. 16, 26, and the Local Rules.

27 The Court requires that the following be submitted to the
28 Courtroom Deputy Clerk on the first day of trial:

1 A. The original exhibits with the Court's exhibit
2 tags shall be stapled to the front of the exhibit on the upper
3 right-hand corner with the case number, case name, and exhibit
4 number placed on each tag.

5 B. One bench book with a copy of each exhibit for
6 use by the Court, tabbed with numbers as described above. (Court's
7 exhibit tags not necessary.)

8 C. Three (3) copies of exhibit lists.

9 D. Three (3) copies of witness lists.

10 E. A joint statement of the case suitable for
11 reading by the Court to the prospective panel of jurors prior to
12 the commencement of jury selection. Counsel are ordered to confer
13 and agree to a one-page joint statement of the case no later than
14 five (5) days prior to the trial date.

15 All counsel are to meet not later than ten (10) days
16 before trial and to stipulate so far as is possible as to
17 foundation, waiver of the best evidence rule, and to those exhibits
18 which may be received into evidence at the start of trial. The
19 exhibits to be so received will be noted on the extra copies of the
20 exhibit lists.

21 A special conference regarding trial exhibits will be
22 held on the Friday before the scheduled Trial date at 3:00 P.M. in
23 Courtroom 10-A, unless the Court otherwise orders.

24 III.

25 ORDER GOVERNING ATTORNEY AND PARTY CONDUCT AT TRIAL

26 A. OPENING STATEMENTS, EXAMINING WITNESSES, AND SUMMATION

27 1. Opening statements, examination of witnesses, and
28 summation will be from the lectern only.

1 2. Counsel must not consume time by writing out words
2 or drawing charts or diagrams. Counsel may do so in advance and
3 explain that the item was prepared earlier as ordered by the Court
4 to save time.

5 3. In final argument, counsel shall not address any
6 juror by name and must avoid any appeal to a juror putting the
7 juror in the position of a party, such as "What would you take for
8 such pain?" or "What would you expect your son or daughter to do in
9 the same circumstances?"

10 4. Never strike the lectern for emphasis.

11 5. The Court will honor reasonable time estimates for
12 opening and closing addresses to the jury. Please be advised this
13 Court will not require a jury to sit longer than 65 minutes in any
14 one session during counsel's summation.

15 B. OBJECTIONS TO QUESTIONS

16 1. Counsel must not use objections for the purpose of
17 making a speech, recapitulating testimony, or attempting to guide
18 the witness.

19 2. When objecting, counsel must rise to state the
20 objection and state only that counsel objects and the legal ground
21 of objection. If counsel wishes to argue an objection further,
22 counsel must ask for permission to do so; the Court may or may not
23 grant a request for conference at sidebar.

24 C. GENERAL DECORUM

25 1. Please keep the trial low-key. It is to be a
26 dignified search for the truth.

27 2. Counsel must not approach the Clerk or the witness
28 box without specific permission. When permission is given, please

1 return to the lectern when the purpose of the permission is
2 finished. Counsel must not engage in questioning a witness at the
3 witness stand.

4 3. Please rise when addressing the Court. Please rise
5 when the jury enters or leaves the courtroom.

6 4. Counsel must address all remarks to the Court.
7 Counsel are not to address the Clerk, the Reporter, persons in the
8 audience, or opposing counsel. If counsel wishes to speak with
9 opposing counsel, counsel must ask permission to talk off the
10 record. Any request for the re-reading of questions or answers
11 shall be addressed to the Court.

12 5. Counsel must not address or refer to witnesses or
13 parties by first names alone. Young witnesses (under 14) may,
14 however, be addressed and referred to by first names.

15 6. Counsel must not make an offer of stipulation unless
16 counsel has conferred with opposing counsel and has reason to
17 believe the stipulation will be acceptable.

18 7. While Court is in session, counsel must not leave
19 counsel table to confer with investigators, secretaries, or
20 witnesses in the back of the courtroom unless permission has been
21 granted in advance.

22 8. Counsel should not by facial expression, nodding, or
23 other conduct exhibit any opinion, adverse or favorable, concerning
24 any testimony being given by a witness. Counsel must admonish
25 counsel's own clients and witnesses to avoid such conduct.

26 9. Where a party has more than one lawyer, only one
27 may object to the testimony or conduct the direct or cross-
28 examination of a given witness.

1 D.

PROMPTNESS OF COUNSEL AND WITNESSES

2 1. The Court makes every effort to commence proceedings
3 at the time set. Promptness is expected from counsel and
4 witnesses. It is counsel's duty to tell the Court on the first day
5 of any commitments in any other court on a subsequent day that may
6 result in absence or late arrival.

7 2. If a witness was on the stand at adjournment, it is
8 counsel's duty to have the witness adjacent to, but not on, the
9 witness stand, ready to proceed, when the court session resumes.
10 If a witness was on the stand at a recess, it is counsel's duty to
11 have the witness back on the stand, ready to proceed, when the
12 court session resumes.

13 a. It is counsel's duty to have the next witness
14 in the courtroom after a recess if the last witness was excused at
15 the time of the recess.

16 b. It is counsel's duty to notify the courtroom
17 deputy clerk in advance if any witness should be accommodated by
18 use of the witness stand's automated platform which lowers and
19 raises to accommodate witnesses who are unable to otherwise take
20 the witness stand.

21 3. No presenting party may be without witnesses. If
22 counsel has no more witnesses to call and there is more than a
23 brief delay, the Court may deem that the party has rested.

24 4. The Court attempts to cooperate with physicians,
25 scientists, and all other professional witnesses and will, except
26 in extraordinary circumstances, accommodate them by permitting them
27 to be put on out of sequence. Counsel must anticipate any such
28 possibility and discuss it with opposing counsel. If there is

1 objection, confer with the Court in advance.

2 E. EXHIBITS

3 1. Each counsel should keep counsel's own list of
4 exhibits and should keep track when each has been admitted in
5 evidence.

6 2. Each counsel is responsible for any exhibits that
7 counsel secures from the Clerk and, at all recesses and at noontime
8 and afternoon adjournments, must return all exhibits in counsel's
9 possession to the Clerk.

10 3. An exhibit not previously marked should, at the time
11 of its first mention, be accompanied by a request that the Clerk
12 mark it for identification. To save time, counsel must show a new
13 exhibit to opposing counsel before it is mentioned in Court.

14 4. Whenever, in counsel's opinion, a particular exhibit
15 is admissible, it may be moved into evidence at the next available
16 recess if the motion to admit it is opposed. (Consider waiting,
17 however, until cross-examination concerning the proposed exhibits
18 is concluded.) In the alternative, counsel may hold all exhibits
19 until the end of counsel's case and move them all into evidence at
20 that time.

21 5. The Court regards admissibility of exhibits as a
22 legal issue for the Court to rule on unless there is agreement
23 among counsel. Counsel are admonished to make no motion to
24 introduce an exhibit while the jury is present unless counsel has
25 previously conferred with opposing counsel and knows that there
26 will be no objection to the motion to admit. When the Court hears
27 a motion to admit an exhibit before the jury, the Court will assume
28 that counsel has already cleared admission of the exhibit with

1 opposing counsel and grant the motion. If any objection is lodged,
2 the Court will expect a full explanation from counsel who made the
3 motion to admit an exhibit while the jury was present.

4 6. Counsel are to advise the Clerk of any agreements
5 they have with respect to the proposed exhibits and as to those
6 exhibits that may be received so that no further motion to admit
7 need be made.

8 7. When referring to an exhibit, counsel should refer
9 to its exhibit number whenever possible. Witnesses should be asked
10 to do the same.

11 8. The Court resists taking time to pass an exhibit
12 among the jury for viewing when it is admitted. A request to do so
13 should be made to the Court in a recess period preceding
14 introduction of the exhibit.

15 9. Counsel must not ask witnesses to draw charts or
16 diagrams nor ask the Court's permission for a witness to do so. If
17 counsel wishes to question a witness in connection with graphic
18 aids, the material must be fully prepared before the court session
19 starts.

20 P. DEPOSITIONS

21 1. All depositions that are to be used in the trial,
22 either as evidence or for impeachment, must be signed and filed
23 before the trial commences. Counsel should check with the Clerk as
24 to whether any deposition in which counsel is interested is in the
25 Clerk's hands and is properly signed.

26 2. In using depositions of an adverse party for
27 impeachment, either one of the following procedures may be adopted:

28 a. If counsel wishes to read the questions and

1 answers as alleged impeachment and ask the witness no further
2 questions on that subject, counsel may merely read the relevant
3 portions of the deposition into the record, stating the page and
4 line where the reading began and the page and line where the
5 reading ended.

6 b. If counsel wishes to ask the witness further
7 questions on the subject matter, the deposition is placed in front
8 of the witness and the witness is told to read silently the pages
9 and lines involved. Then counsel may either ask the witness
10 further questions on the matter and thereafter read the quotations
11 or read the quotations and thereafter ask the further questions.
12 Counsel should have an extra copy of the deposition for this
13 purpose.

14 3. Where a witness is absent and the witness' testimony
15 is offered by deposition, please observe the following procedures:

16 A reader should occupy the witness chair and read
17 the testimony of the witness while the examining lawyer asks the
18 questions. All colloquy among counsel or parties on the deposition
19 record, except relevant stipulations, should be omitted from the
20 reading so as to deliver only questions and answers.

21 G. USING NUMEROUS ANSWERS TO INTERROGATORIES AND REQUESTS
22 FOR ADMISSIONS

23 Whenever counsel expects to offer a group of answers to
24 interrogatories or requests for admissions, extracted from one or
25 more lengthy documents, counsel should prepare a new document
26 listing each question and answer and identifying the document from
27 which it has been extracted. Copies of this new document should be
28 given to the Court and opposing counsel. This will save the time

1 | of thumbing through extensive files to locate particular items.

JURY INSTRUCTIONS

All requested instructions must be filed and served in accordance with the Local Rules of this District or this Court's Order served on the parties at the criminal arraignment or other pretrial hearing. Supplemental instructions must be filed and served as soon as the need for them becomes apparent.

ADVANCE NOTICE OF EVIDENTIARY OR DIFFICULT QUESTIONS

If any counsel has reason to anticipate that a difficult question of law or evidence will raise legal argument, requiring research and/or briefing, counsel must give the Court advance notice. Counsel are directed to notify the Clerk at the day's adjournment if an unexpected legal issue arises that could not have been foreseen and addressed by a motion in limine (see F.R.E. 103).

15 J. FINAL PHASE OF JURY TRIALS

1. Time for Arguments

17 Counsel will be asked to provide reasonable
18 estimates for the time needed to present closing summation. Each
19 counsel will be held to those estimates to within five (5) and no
20 more than ten (10) minutes.

21 Counsel should keep track of time consumed in
22 argument. Counsel may, after fifty (50) minutes and before sixty-
23 five (65) minutes, ask the Court if this would be a "convenient
24 time" to take a short break before going on to the next topic.
25 Counsel's request for a break will be honored.

If no request for a recess is made within the foregoing period of time, the Court will declare a recess.

28 / 1

1 2. Exhibits Referred to During Argument

2 The Clerk is not required to be present during
3 summation and, therefore, is not available to supply exhibits.
4 Exhibits can be arranged and made available to counsel at the
5 lectern if they are needed. Counsel must advise the Clerk of this
6 need at least one day before closing arguments begin.

7 3. Court Reporter Transcripts

8 Counsel are admonished to not state in summation, "I
9 am reading from the reporter's transcript." Counsel may, however,
10 refer to "notes" (which may include a partial transcript) and
11 proceed to deliver the recounted in a "question and answer" format.
12 Counsel are not to suggest to the jury that they may request re-
13 reading of testimony. That subject will be covered with the jury
14 in the jury charge as follows:

15 Re-reading of testimony is possible, but I
16 must review all of what is to be re-read --
17 there is no transcript made up. And, even if
18 there were, I would have to have it re-read
19 due to objections, side-bars, and other
20 proceedings outside the jury's presence.
21 Moreover, I or the attorneys might feel that
22 other matters should be included in the same
23 read-back. Preparing for a re-read of
24 testimony takes time. Please understand that,
25 so that if a request is made, we will gladly
26 arrange to do so, but the jury should keep
27 deliberating until we are able to make sure
28 that we have everything ready.

1 4. Presence of counsel, parties and agents at
2 adjournment once deliberations start:

3 Since another trial will likely have started while
4 the jury in counsel's case is deliberating, the following options
5 are suggested for the day's adjournment in lieu of convening a
6 separate session of Court.

a. Counsel may stipulate that the Court sitting alone may admonish the jury at the adjournment and the Court will inform the jury that counsel and parties have been excused; or,

b. Counsel may stipulate that the Courtroom Deputy
Clerk may admonish the jurors and excuse them for the evening; or,

12 c. Counsel may waive the necessity of an evening
13 admonition at adjournment in light of admonitions to the jury as
14 trial progressed.

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Alouatta (s. *leucotis*)

ALICEMARIE H. STOTLER
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

LAW OFFICES
McANDREWS, HELD & MALLOY, LTD.

34TH FLOOR

GEORGE P. MCANDREWS
JOHN J. HELD
TIMOTHY J. MALLOY
WILLIAM M. WEALEY
LAWRENCE N. JARVIS
GREGORY J. VOGLER
JEAN DUDEK KUEHLER
HERBERT D. HART III
ROBERT W. FIEBELKER
THOMAS J. WINDICUS
STEVEN J. HAMPTON
PRISCILLA F. GALLAGHER
STEPHEN F. SHERRY
PATRICK J. ARNOLD JR.
GEORGE F. WHEELER
JANET H. McNICHOLAS
CHRISTOPHER C. WINSLADE
EDWARD A. MAS II
GREGORY C. SCHODC
EDWARD W. REMUS
DONALD J. POCHODPICH

SHARON A. KWANO
DAVID D. HEADRICK
ALEJANDRO MENCHACA
KIRK A. VANDER LEEST
RICHARD T. McCUAULIFFE JR.
PETER J. MCANDREWS
LELAND O. HANSEN
JAMES H. HAFTERPEK
JOSEPH R. DICK
ELIJIO C. PIMENTEL
JAMES P. MURPHY
DEAN A. PELLETIER
MICHAEL B. MARLIN
JAMES R. MUTTON
ROBERT A. SURRETTA
JOSEPH M. BARICH
SCOTT P. MCBRIDE
PATRICIA J. MORATH
TROY A. GROETKEN
GERALD C. WILLIS
JOHN A. WIBERG

500 WEST MADISON STREET
CHICAGO, ILLINOIS 60661

TELEPHONE: (312) 775-8000
FACSIMILE: (312) 775-8100
WWW.MHMLAW.COM

September 1, 2005

WILHELM L. RAD
SANDRA A. FRANTZEN
RONALD N. SPULER
CHRISTOPHER V. CARANI
RONALD A. DICERDO
JENNIFER E. LACROIX
JOSEPH F. HARDING
JOSEPH M. DUTBACHER
BARA J. BARTOS
JOHN L. ADAMIC
MICHAEL J. FITZPATRICK
DAVID S. PETTY
MICHAEL T. CRUZ*
MIRUT P. DALAL
CHRISTOPHER N. GEORGE
MATTHEW A. ANDERSON
YUFENG HA
DENNIS H. JAERVOJAK
DEBORAH A. LAUGHTON
WILLIAM D. GONT
DENNIS P. HACKETT

HOPETON B. WALKER
DAWN L. PETERSON
DONALD I. BEREMSKI
PHILIP H. SHERIDAN
CHRISTOPHER R. CARROLL
CHRISTOPHER M. SCHARRFF
CONSUELO G. ERWIN
PETER J. PROMMER
MERLE B. ELLIOTT
BRIAN C. DIANCO
PAUL W. MCANDREWS
LAURA M. PERSONICK
ANDREW B. KARP
JONATHAN M. RUSHMAN
JEREMY N. GAYED
CHRISTOPHER J. BUCHKO

OF COUNSEL
S. JACK BAUER

*ADMITTED TO PRACTICE IN CA

VIA FACSIMILE

S. Christian Platt, Esq.
Paul, Hastings, Janofsky & Walker LLP
3579 Valley Centre Drive
San Diego, CA 92130

Re: ICU Medical, Inc. v. ALARIS Medical Systems, Inc.,
Case No. SA CV 04-0689 AHS (VBKx)

Dear Christian:

I write to follow up on Tuesday's telephone conference in which we discussed the Joint Stipulation for ALARIS's first motion to compel with you and Mark David Peters of the Milbank firm.

The parties discussed and/or agreed to the following:

1. At the outset, ALARIS expressed its disappointment that ICU forced ALARIS to spend significant time and resources drafting its portion of a lengthy Joint Stipulation only to have ICU concede on at least three of the five discovery disputes on the day ICU returned its portion of the stipulation. For example, ICU's refusal to supplement its response to ALARIS Interrogatory No. 1 was one of the disputes addressed in the stipulation. ALARIS raised this dispute over two months ago. (See 6/22/05 Ltr. from Headrick to Platt at 2.) Nevertheless, ICU served ALARIS with its half of the Joint Stipulation on the evening of Friday, August 26 and at the same time provided its supplemented response to ALARIS's Interrogatory No. 1.

In short, ALARIS wasted much effort obtaining discovery that ICU ultimately ended up providing (or saying it would provide). This has prejudiced ALARIS's ability to conduct discovery and wastes ALARIS's resources.

2. Transcripts from prior ICU patent litigation: ALARIS raised this discovery deficiency on June 20 and July 8. (See 6/20/05 Ltr. from Headrick to Platt; 7/8/05 Ltr. from Headrick to Platt.)

EXHIBIT 2
Page 1 of 7

McANDREWS, HELD & MALLOY, LTD.

S. Christian Platt, Esq.
September 1, 2005
Page 2 of 6

ICU wrote in the draft Joint Stipulation that

[B]ased upon ALARIS's representations that requests 10, 11 and 27 are deemed "narrowly tailored" to seek only the transcripts and exhibits from the *Tri-State*, *Porex*, *Medtronics*, *Baxter*, and *Medex* cases, ICU will produce these documents to the extent they exist and are not privileged. Because there is no dispute, ALARIS's motion should be denied as moot.

(8/26/05 Draft Joint Stipulation at 49.)

- a. ALARIS said that it did not agree with ICU's description of ALARIS's documents requests being "narrowly tailored" to only transcripts and exhibits. ALARIS said that it was currently seeking a narrow set of documents (i.e. transcripts and exhibits) but that other documents may fall within the scope of ALARIS's requests.
- b. ICU said that
 - i. there are no deposition transcripts of ICU witnesses from the Medtronics and Porex cases;
 - ii. ICU had produced the deposition transcripts of ICU witnesses (along with the exhibits) from the Medex case to ALARIS on August 30 (ALARIS is in the process of confirming this);
 - iii. ICU would produce the deposition transcripts of ICU witnesses (along with the exhibits) from the Baxter and Tri-State cases by Friday, September 9;¹
 - iv. ICU had produced all the deposition transcripts (and exhibits) from the Braun case as outlined in Braun's July 19, 2005 letter (ALARIS is in the process of confirming this);
 - v. ICU would notify ALARIS promptly if it was withholding any transcript or exhibit on the grounds of the attorney-client privilege; and
 - vi. currently, the only such materials that ICU was withholding were documents that ICU disclosed as part of ICU's waiver of the attorney-client privilege in the Medex case (this is a topic of dispute between the parties (see infra) and that ICU would

¹ During the conference, ICU said in a number of instances that it would produce documents or things "by Friday, September 9." ALARIS understands this to mean ICU will produce any such documents or things so that ALARIS receives them no later than Friday, September 9.

McANDREWS, HELD & MALLOY, LTD.

S. Christian Platt, Esq.
September 1, 2005
Page 3 of 6

add these documents to its supplemental privilege log in this case.

3. Settlement agreements from prior ICU patent litigation: ALARIS raised this deficiency on July 8. (See 7/8/05 Ltr. from Headrick to Platt.) ICU said that

- a. there was no agreement for the Porex case;
- b. ICU had produced the settlement agreement for the Medex case on August 29, 2005; and
- c. ICU would produce the settlement agreements for the Braun, Medtronic, Baxter, and Tri-State cases "in the next couple of days" (ICU also said that it was still trying to locate the agreement settling the Baxter case);

4. Offers to settle prior ICU patent litigation: Despite the fact that ALARIS had raised this deficiency on July 8 and in the draft Joint Stipulation, as of our conference on Tuesday, ICU had not yet conducted any search for "offers to settle" the above cases. ICU could not "represent one way or the other" as to whether any such documents existed. ICU agreed to conduct such a search in the "next few days" to determine if there were any documents that would be subject to this dispute. ALARIS is disappointed that ICU cannot say, at this stage of discovery and given that ALARIS raised this dispute months ago, whether such documents exist. Again, ICU's conduct is prejudicing ALARIS's ability to conduct discovery.

5. ICU expert reports and declarations from the Braun litigation: Braun's counsel stated on July 19 and August 25, that it had no objection to ICU producing to ALARIS certain expert reports and declarations, including any documents referenced in any such reports or declarations. We understood from ICU that ICU will produce these documents by Friday, September 9.²

6. ICU's response to ALARIS Interrogatory No. 1: This is discussed briefly above. ALARIS is evaluating ICU's supplemental response.

7. Information produced by ICU in connection with ICU's election to rely on the advice of counsel in the Medex case: ALARIS raised this deficiency on June 22.

The parties discussed and/or agreed to the following:

- a. ICU confirmed that it was withholding documents that were the subject of ICU's waiver in the Medex case on the grounds of privilege.

² With respect to documents that may contain Braun confidential information, ICU has asked that ALARIS confirm that it will accept ICU's production of these documents under the conditions set forth in Braun's August 25 letter. Although ALARIS does not think such a confirmation is necessary, we will send a confirmation to Braun's counsel with a copy to you.

McANDREWS, HELD & MALLOY, LTD.

S. Christian Platt, Esq.
September 1, 2005
Page 4 of 6

- b. ALARIS pointed out that in Medex's December 21, 2001 Motion to Strike in that case, Medex identified an "opinion of counsel" letter that ICU apparently produced. Medex said "ICU identified for the first time that it intended to rely upon a letter that Nataupsky authored as an opinion of counsel. Although ICU had previously produced the Nataupsky letter, ICU did not produce documents related to this opinion of counsel." (12/21/05 Medex Mot. at 5.) ICU said that this letter was not "privileged" and ICU said that it had produced the Nataupsky letter to ALARIS on August 30.

We have been unable to locate the Nataupsky letter in ICU's production. Would you please confirm that it has been produced and provide us with the Bates number for the document?

- c. ICU confirmed that there was "more than one" opinion that ICU was withholding from the Medex case on the grounds of the attorney-client privilege (despite having waived that privilege and producing these documents in the Medex case). ICU refused to tell ALARIS if the opinions were based on invalidity, non-infringement, unenforceability, or some combination of these grounds. ICU said that it had not listed the opinions on ICU's privilege log in this case. ICU agreed that they would do this on ICU's next supplement to ICU's log.
- d. The parties agreed that this was a discovery dispute to be resolved by the Court. ALARIS said it would edit the Joint Stipulation to address this dispute and any new information or facts learned since the parties drafted the stipulation. ALARIS said it would forward the revised Joint Stipulation to ICU in the next couple of days. ICU confirmed that it would return its portion of the revised Joint Stipulation in one or two days once it received the draft from ALARIS.

8. DFU's and assembly drawings: ALARIS raised this deficiency on June 20. In its draft of the Joint Stipulation ICU said the following:

McANDREWS, HELD & MALLOY, LTD.

S. Christian Platt, Esq.
September 1, 2005
Page 5 of 6

the general rule for determining actual damages to a patentee that is itself producing the patented item is to determine the sales and profits lost to the patentee because of the infringement." *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538, 1545 (Fed. Cir. 1995) (*en banc*) (citations omitted). "To recover lost profits damages, the patentee must show a reasonable probability that, 'but for' the infringement, it would have made the sales that were made by the infringer." *Id.* (citations omitted). Here, there is a fairly limited "but for" world: ALARIS does not sell custom IV sets. However, ALARIS does sell approximately 150 products that infringe ICU's patents by incorporating an infringing SmartSite and SmartSite Plus needle-free valve. Accordingly, ICU offered a solution to narrow the scope of this dispute. ICU would identify the specific ICU products that incorporate a CLAVE that would have been sold "but for" ALARIS' infringing sales of its approximately 150 infringing products. See July 11, 2005 letter from Platt to Headrick (Warren Dec., Ex. B). During the meet and confer, ICU also offered to provide DFUs and assembly drawings for each of those products, which would allow ALARIS to evaluate whether a customer would have purchased ICU's original product but for Alaris' infringing product. *Id.* Yet ALARIS never responded to ICU's suggestion to resolve this dispute. Nevertheless, ICU will make good on its offer and is in the process of producing DFUs and assembly drawings for its products that would have been sold but for ALARIS' infringing products.

(Draft Joint Stipulation at 44-45.)

- a. ALARIS said it disagreed that ICU offered to produce the information and documents as outlined in ICU's portion of the draft Joint Stipulation.
- b. ALARIS stated that, as an initial matter, any discussion regarding this deficiency or any agreement reached on this deficiency did not apply to ALARIS's concerns regarding ICU's marking of its products, ICU's burden and obligation to produce evidence of continuous marking, ICU's response to ALARIS Interrogatory No. 11, or ALARIS's August 26, 2005 deficiency letter. ICU agreed that it was "clear" on ALARIS's position.
- c. The parties subsequently agreed that ICU would produce the assembly drawings and DFU's for the ICU products that incorporate a CLAVE and ICU says that it would have sold "but for" ALARIS's alleged infringement. ICU said it was in the process of collecting and producing these documents and that they would be produced as one continuous group of documents by Friday, September 9. ICU also agreed to send ALARIS an e-mail identifying the Bates range that contains these DFU's and assembly drawings.
- d. ALARIS then raised concerns with the other 2,850 ICU products that incorporate a CLAVE connector. ALARIS said that if ICU was not

EXHIBIT 2
Page 5 of 7

McANDREWS, HELD & MALLOY, LTD.

S. Christian Platt, Esq.
September 1, 2005
Page 6 of 6

going to produce DFU's and assembly drawings for these products, ICU must stipulate to (i) supplement Section VI of ICU's Preliminary Infringement Contentions to state that ICU would only rely on the approximately 150 ICU products discussed above in this case, (ii) ICU would not offer any evidence of relating to the sale or marketing of the other 2,850 ICU products for any purpose in this case (e.g. alleged commercial success, nexus, etc.). ICU's initial reaction was that it would not agree to this stipulation. ICU represented that it intended to rely at trial on any ICU product that incorporated a CLAVE connector (including these 2,850 products) as an embodiment of ICU's asserted claims. ICU also said that it intended to offer evidence at trial of the alleged commercial success of the CLAVE connector by referring to and relying on sales of all products that incorporate the CLAVE, including these 2,850 products. ICU then asked that ALARIS give ICU an opportunity to reconsider this issue. The parties touched base on this issue again yesterday, and ICU requested additional time to consider the issue.

- e. Because ICU was using a declaration from Ms. Alison Burcar to claim that it is unduly burdensome to produce the DFU's and assembly drawings for these products, ALARIS requested a copy of the declaration. ICU agreed to send it.

On a different discovery matter, ALARIS suggested the parties agree that seven hours of 30(b)(6) testimony be counted as one deposition for the purposes of deposition limits. ICU said it would consider this idea and get back to ALARIS.

Very truly yours,



David D. Headrick

DH/jl

EXHIBIT 2
Page 6 of 7

*****TRANSMISSION REPORT*****

(THU) SEP 1 2005 17:16
McANDREWS, HELD & MALLOY

DOCUMENT #	TIME STORED	TIME SENT	DURATION	PAGE(S)	MODE	RESULT
4861050-785	9. 1 17:12	9. 1 17:12	3 17"	7	ECM	OK

DESTINATION	DST. TEL #
#21518587202555	#21518587202555



MCANDREWS, HELD & MALLOY
34TH FLOOR
500 WEST MADISON STREET
CHICAGO, ILLINOIS 60661

TELEPHONE: (312) 775-8000
FACSIMILE: (312) 775-8100

FAX COVER LETTER

CONFIDENTIAL

THE ENCLOSED MATERIAL IS INTENDED FOR THE RECIPIENT NAMED BELOW AND, UNLESS OTHERWISE EXPRESSLY INDICATED, IS CONFIDENTIAL AND PRIVILEGED INFORMATION. ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THE ENCLOSED MATERIALS IS PROHIBITED. IF YOU RECEIVE THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AT OUR EXPENSE, AND DESTROY THE ENCLOSED MATERIALS. YOUR COOPERATION IS APPRECIATED.

TO:	S. Christian Platt	
FROM:	David D. Headrick	USER ID: 8011
DATE:	September 1, 2005	
FAX NO.:	(858) 720-2555	
CLIENT:	2174	
MATTER:	50848US01	

Number of Pages This Transmission (Including Cover Page): 7

Message:

If you have problems receiving this facsimile transmission, please contact the sender at the above telephone number.

EXHIBIT 2
Page 7 of 7

EXHIBIT 3

1 DONALD L. MORROW (SBN 66922)
2 PAUL, HASTINGS, JANOFSKY & WALKER LLP
3 695 Town Center Drive
4 Seventeenth Floor
5 Costa Mesa, CA 92626
6 Telephone: (714) 668-6200
7 Facsimile: (714) 979-1921

8 JOHN M. BENASSI (SBN 074137)
9 STEPHEN S. KORNICZKY (SBN 135532)
10 S. CHRISTIAN PLATT (SBN 199318)
11 JOSEPH M. WARREN (SBN 222870)
12 PAUL, HASTINGS, JANOFSKY & WALKER LLP
13 3579 Valley Centre Drive
14 San Diego, CA 92130
15 Telephone: (858) 720-2500
16 Facsimile: (858) 720-2555

17 Attorneys for Plaintiff and Counter-defendant
18 ICU MEDICAL, INC.

19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA
21 SOUTHERN DIVISION

22 ICU MEDICAL, INC., a Delaware
23 corporation,

CASE NO. SA CV 04-0689 AHS (VBKx)

24 Plaintiff,
25 : vs.
26 ALARIS MEDICAL SYSTEMS,
27 INC., a Delaware corporation,
28 Defendant.

ICU MEDICAL, INC.'S RESPONSES
TO ALARIS MEDICAL SYSTEMS,
INC.'S REQUESTS FOR
PRODUCTION NOS. 1-46

22 ALARIS MEDICAL SYSTEMS,
23 INC., a Delaware corporation,

24 Counter-plaintiff,
25 : vs.
26 ICU MEDICAL, INC., a Delaware
27 corporation,

28 Counter-defendant.

SAN/983171

EXHIBIT 3
Page 1 of 39

1 PROPOUNDING PARTY: ALARIS MEDICAL SYSTEMS, INC.
2 RESPONDING PARTY: ICU MEDICAL, INC.
3 SET NO: ONE
4 REQUESTS NOS: 1-46

5 Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiff
6 and Counter-defendant ICU Medical, Inc. ("ICU") responds to Defendant's and
7 Counter-plaintiff's Alaris Medical Systems, Inc.'s ("Alaris"), First Set of Requests
8 for Production of Documents Nos. 1-46, as follows:

9 PRELIMINARY STATEMENT

10 ICU has not completed its investigation and discovery relating to this case and
11 has not completed its preparation for trial. While ICU is currently conducting its
12 investigation and discovery relating to this case, ICU is a large company with many
13 employees, documents, and records. ICU will make every effort to conduct its
14 investigation and discovery in a timely manner, however, completion of the
15 investigation and discovery is necessarily time consuming. ICU will, therefore,
16 produce documents and things as called for by these requests, subject to any general
17 and specific objections indicated below, on a rolling basis as relevant information is
18 uncovered.

19 Accordingly, the following responses are based upon, and necessarily limited
20 by, the records and information still in existence, presently recollectcd, and thus far
21 discovered in the course of preparing the response. The following responses are
22 given without prejudice to ICU's right to produce all evidence, whenever
23 discovered, relating to the proof of facts subsequently discovered to be material. In
24 addition, ICU reserves the right to produce and refer to at trial, or at any other
25 hearing, any evidence, facts, documents or information not yet discovered or not yet
26 determined to be relevant by ICU or its counsel.

SAN98317 1

SA CV 04-689 AHS (VBKx)

-1-

ICU'S RESPONSE TO ALARIS' REQUESTS
FOR PRODUCTION NOS 1-46

EXHIBIT 3
Page 2 of 39

GENERAL OBJECTIONS

Each of ICU's responses is subject to, and incorporates, the following General Objections. ICU specifically incorporates each of these General Objections into its responses to each of Alaris' discovery requests, whether or not each such General Objection is expressly referred to in ICU's response to a specific request.

ICU will make, and has made, reasonable efforts to respond to Alaris' Requests For Production Nos. 1-46, to the extent that no objection is made, as ICU understands and interprets each request. If Alaris subsequently asserts any interpretation of any request that differs from the interpretation of ICU, then ICU reserves the right to supplement and amend its objections and responses.

1. ICU's discovery and investigation of the facts relevant to this case are ongoing. ICU reserves the right to amend and/or supplement these Responses in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

2. ICU objects to each request to the extent that it seeks information protected by the attorney-client privilege, work product doctrine or other evidentiary privilege or immunity, including information that is privileged under joint privilege or the "community of interest" doctrine, including but not limited to statements made under the protection of a joint defense agreement. ICU object to any request to the extent it seeks any such privileged information that was created after ICU filed this lawsuit. No privileged information or documents related to ICU's trial strategy will be produced or logged. To the extent that any such information is inadvertently produced, such production shall not waive nor signify intent to waive these respective privileges.

3. ICU objects to each request to the extent that it seeks information that is confidential to ICU and/or third parties or subject to court protective orders. A protective order has not yet been entered in this case. Until such time as a protective order has been executed by the parties and entered by the Court and/or ICU obtains

1 the approval of third parties, ICU objects to producing confidential documents called
2 for by these Requests to the extent that they seek information that is confidential to
3 ICU or to third parties.

4 4. ICU further objects to each request to the extent that any response to a
5 given request may require ICU to make a substantive admission. Requests for
6 production phrased in this manner should instead take the form of requests for
7 admission. No incidental or implied admissions are intended by these responses.
8 The fact that ICU has responded or objected to any request should not be taken as an
9 admission that ICU accepts or admits the existence of any "facts" set forth or
10 assumed by such request.

11 5. ICU's responses do not constitute admissions that any information
12 provided in response to these Requests is relevant, material or admissible at trial.
13 ICU expressly reserves the right to appropriately object to any document introduced
14 at trial.

15 6. ICU objects to each request and all requests collectively to the extent
16 that they are unduly broad, burdensome, or oppressive, and seek information that is
17 not relevant to the claim or defense of any party.

18 7. ICU objects to each request to the extent that it seeks information
19 already in the possession of Alaris or its counsel on the grounds that it is
20 unnecessary, unduly burdensome, and oppressive.

21 8. ICU objects to each request to the extent that it requires ICU to produce
22 documents equally available to Alaris, documents in the public domain, and/or
23 documents from sources other than ICU, including but not limited to court filings
24 and documents recorded in official, local, state, or federal records, on the grounds
25 that it is unduly burdensome and oppressive.

26 9. ICU objects to each request to the extent that it seeks information not in
27 ICU's possession, custody, or control on the grounds that it is unduly burdensome
28 and oppressive.

1 10. ICU objects to Alaris' Definitions and Instruction to the extent that they
2 are broader than or purport to impose obligations upon ICU beyond those required
3 by the Federal Rules of Civil Procedure, the Local Rules and/or the Court's standing
4 orders.

5 11. ICU objects to each request to the extent that it seeks the production of
6 original documents. ICU reserves the right to produce copies of documents.

7 12. ICU objects to Alaris' Definition for the term "document" on the
8 grounds that it is overbroad and unduly burdensome.

9 13. ICU objects to Alaris' Definition for the term "ICU" on the grounds
10 that the definition is overbroad and to the extent that it includes anyone other than
11 ICU Medical, Inc. ICU is responding on behalf of ICU Medical, Inc.

12 14. ICU objects to Alaris' Instruction No. 2 to the extent it purports to place
13 an obligation on ICU beyond that required by the Federal Rules of Civil Procedure.

14 15. ICU objects to Alaris' Instruction No. 3 to the extent it purports to place
15 an obligation on ICU beyond that required by the Federal Rules of Civil Procedure.

16 16. ICU objects to Alaris' Instruction No. 4 to the extent it purports to place
17 an obligation on ICU beyond that required by the Federal Rules of Civil Procedure.

18 17. ICU objects to Alaris' Instruction No. 7 to the extent it purports to place
19 an obligation on ICU beyond that required by the Federal Rules of Civil Procedure.

20 18. ICU objects to Alaris' requests for production to the extent that they are
21 duplicative.

22 19. As used herein, the phrase "ICU will produce relevant, responsive, non-
23 privileged documents" and related phrases do not constitute a representation that
24 such responsive documents exist or that they have been located, but only that ICU
25 will make, or has made, a good faith, reasonable effort to search for such documents
26 and, subject to its objections, will produce at a mutually agreed upon place and time
27 such documents within its possession, custody or control. The term "non-privileged
28 documents" refers to documents that are not protected by the attorney-client

1 privilege, the work product doctrine, or any other privilege or immunity precluding
2 discovery.

3 Subject to the foregoing General Objections and the following specific
4 objections, ICU provides the following responses to Alaris' Requests for Production
5 of Documents:

6 **RESPONSES TO REQUESTS FOR PRODUCTION**

7 **REQUEST FOR PRODUCTION NO. 1:**

8 All documents referring or relating to the conception, research, development,
9 or testing of any alleged invention described or claimed in the Subject Patent,
10 including, without limitation:

11 (a) All documents referring or relating to the first written description of
12 such alleged invention;

13 (b) All documents referring or relating to the first drawing pertaining to
14 such alleged invention;

15 (c) All documents referring or relating to the first oral disclosure of such
16 alleged invention; and

17 (d) All documents referring or relating to the first disclosure of such
18 alleged invention to a third party not under any obligation of confidentiality with
19 respect to the alleged invention.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

21 In addition to its General Objections, ICU objects to this request to the extent
22 that it seeks information protected by the attorney-client privilege and/or the work-
23 product doctrine, or any other lawfully recognized privilege or immunity.

24 ICU objects to producing confidential documents called for by this Request to
25 the extent that it seeks information that is confidential to ICU or to third parties.

26 ICU further objects to this request on the grounds that it is overbroad and
27 unduly burdensome. ICU objects that the term "described" renders this request
28 vague, ambiguous, overbroad and this request seeks information that is not relevant

1 to the claim or defense of any party. Furthermore, the term "described" calls for a
2 legal conclusion as what constitutes an invention – inventions are defined by claims.

3 Subject to and without waiving its specific and general objections, ICU
4 responds as follows: ICU will produce relevant, responsive, non-privileged
5 documents in its possession, custody or control.

6 **REQUEST FOR PRODUCTION NO. 2:**

7 All documents referring or relating to the reduction to practice (actual or
8 constructive) of any alleged invention described or claimed in the Subject Patent,
9 and all documents and things referring or relating to the exercise of reasonable
10 diligence in connection therewith, including, without limitation:

11 (a) All documents referring or relating to any effort or activity of the
12 inventors or any others directed toward the reduction to practice of such alleged
13 invention;

14 (b) All documents describing the activities of the named inventor of such
15 alleged invention, between the conception of such alleged invention and the first
16 actual reduction of such alleged invention to practice; and

17 (c) All documents referring or relating to the first actual reduction of such
18 alleged invention to practice.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

20 In addition to its General Objections, ICU objects to this request to the extent
21 that it seeks information protected by the attorney-client privilege and/or the work-
22 product doctrine, or any other lawfully recognized privilege or immunity.

23 ICU objects to producing confidential documents called for by this Request to
24 the extent that it seeks information that is confidential to ICU or to third parties.

25 ICU further objects to this request on the grounds that it is overbroad and
26 unduly burdensome. ICU objects that the term "described" renders this request
27 vague, ambiguous, overbroad and this request seeks information that is not relevant.

28 SAN/98317 1

SA CV 04-689 AHS (V ркx)

-6-

ICU'S RESPONSE TO ALARIS' REQUESTS
FOR PRODUCTION NOS. 1-46

1 to the claim or defense of any party. Furthermore, the term "described" calls for a
2 legal conclusion as what constitutes an invention – inventions are defined by claims.

3 Further, ICU objects to this request as unduly burdensome to the extent it is
4 duplicative of Alaris' Request for Production No. 1.

5 Subject to and without waiving its specific and general objections, ICU
6 responds as follows: ICU will produce relevant, responsive, non-privileged
7 documents in its possession, custody or control.

8 **REQUEST FOR PRODUCTION NO. 3:**

9 All documents (including, without limitation, publications, research or
10 development reports, text materials, articles or studies) used as reference materials
11 in connection with the conception or development of any alleged invention
12 described or claimed in the Subject Patent.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

14 In addition to its General Objections, ICU objects to this request to the extent
15 that it seeks information protected by the attorney-client privilege and/or the work-
16 product doctrine, or any other lawfully recognized privilege or immunity.

17 ICU further objects to this request on the grounds that it is overbroad and
18 unduly burdensome. ICU objects that the term "described" renders this request
19 vague, ambiguous, overbroad and this request seeks information that is not relevant
20 to the claim or defense of any party. Furthermore, the term "described" calls for a
21 legal conclusion as what constitutes an invention – inventions are defined by claims.

22 ICU objects to producing confidential documents called for by this Request to
23 the extent that it seeks information that is confidential to ICU or to third parties.

24 Further, ICU objects to this request as unduly burdensome to the extent it is
25 duplicative of Alaris' Request for Production Nos. 1 and 2.

26 Subject to and without waiving its specific and general objections, ICU
27 responds as follows: ICU will produce relevant, responsive, non-privileged
28 documents in its possession, custody or control.

1 **REQUEST FOR PRODUCTION NO. 4:**

2 All documents constituting, referring or relating to the research and
3 development notes and records (including lab notebooks) of the named inventor of
4 the Subject Patent, or any other individuals who contributed to or worked on the
5 conception, design or development of any alleged inventions described or claimed in
6 the Subject Patent.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

8 In addition to its General Objections, ICU objects to this request to the extent
9 that it seeks information protected by the attorney-client privilege and/or the work-
10 product doctrine, or any other lawfully recognized privilege or immunity.

11 ICU objects to producing confidential documents called for by this Request to
12 the extent that it seeks information that is confidential to ICU or to third parties.

13 ICU further objects to this request on the grounds that it is overbroad and
14 unduly burdensome. ICU objects that the term "described" renders this request
15 vague, ambiguous, overbroad and this request seeks information that is not relevant
16 to the claim or defense of any party. Furthermore, the term "described" calls for a
17 legal conclusion as what constitutes an invention – inventions are defined by claims.

18 Further, ICU objects to this request as unduly burdensome to the extent it is
19 duplicative of Alaris' Request for Production Nos. 1, 2 and 3.

20 Subject to and without waiving its specific and general objections, ICU
21 responds as follows: ICU will produce relevant, responsive, non-privileged
22 documents in its possession, custody or control.

23 **REQUEST FOR PRODUCTION NO. 5:**

24 All documents constituting, referring, or relating to the preparation, filing and
25 prosecution of the application for the Subject Patent or any Counterpart Patent,
26 including all documents and things provided to or gathered by the applicant's patent
27 counsel or patent agents in connection with the preparation, filing, and prosecution
28 of the Subject Patent or Counterpart Patent application(s), and all correspondence

1 provided to or from any patent office, patent receiving office, or international patent
2 body (such as WIPO);

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

4 In addition to its General Objections, ICU objects to this request to the extent
5 that it seeks information protected by the attorney-client privilege and/or the work-
6 product doctrine, or any other lawfully recognized privilege or immunity.

7 ICU objects to producing confidential documents called for by this Request to
8 the extent that it seeks information that is confidential to ICU or to third parties.

9 ICU further objects to this request on the grounds that it is overbroad and
10 seeks information that is not relevant to the claim or defense of any party. For
11 example, the phrases "Counterpart Patent" and "Counterpart Patent applications" are
12 overbroad and seek information that is not relevant to the claim or defense of any
13 party. ICU objects to providing any information relating to pending patent
14 applications as the confidentiality of such applications outweighs any potential
15 relevance to this action.

16 ICU further objects to this request on the grounds that it is vague and
17 ambiguous. For example, the terms "international patent body" and "WIPO" are
18 vague and ambiguous.

19 Subject to and without waiving its specific and general objections, ICU
20 responds as follows: ICU will produce relevant, responsive, non-privileged
21 documents in its possession, custody or control.

22 **REQUEST FOR PRODUCTION NO. 6:**

23 All documents constituting, referring, or relating to the preparation, filing and
24 prosecution of the application for U.S. Patent No. 6,572,592 ("the 592 Patent"),
25 including all documents and things provided to or gathered by the applicant's patent
26 counsel or patent agents in connection with the preparation, filing, and prosecution
27 of the Subject Patent and Counterpart Patent application(s), and all correspondence
28

1 provided to or from any patent office, patent receiving office, or international patent
2 body (such as WIPO).

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

4 In addition to its General Objections, ICU objects to this request to the extent
5 that it seeks information protected by the attorney-client privilege and/or the work-
6 product doctrine, or any other lawfully recognized privilege or immunity.

7 ICU objects to producing confidential documents called for by this Request to
8 the extent that it seeks information that is confidential to ICU or to third parties.

9 ICU further objects to this request on the grounds that it is overbroad and
10 seeks information that is not relevant to the claim or defense of any party. For
11 example, the phrase "Counterpart Patent application(s)" is overbroad and seeks
12 information that is not relevant to the claim or defense of any party. ICU objects to
13 providing any information relating to pending patent applications as the
14 confidentiality of such applications outweighs any potential relevance to this action.

15 ICU further objects to this request on the grounds that it is vague and
16 ambiguous. For example, the terms "international patent body" and "WIPO" are
17 vague and ambiguous.

18 Subject to and without waiving its specific and general objections, ICU
19 responds as follows: ICU will produce relevant, responsive, non-privileged
20 documents in its possession, custody or control.

21 **REQUEST FOR PRODUCTION NO. 7:**

22 All documents referring or relating to any telephone or personal interviews
23 with any examiner or other personnel of the United States Patent and Trademark
24 Office in connection with Subject Patent or the 592 Patent.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

26 In addition to its General Objections, ICU objects to this request to the extent
27 that it seeks information protected by the attorney-client privilege and/or the work-
28 product doctrine, or any other lawfully recognized privilege or immunity.

1 ICU objects to producing confidential documents called for by this Request to
2 the extent that it seeks information that is confidential to ICU or to third parties.

3 Further, ICU objects to this request as unduly burdensome to the extent it is
4 duplicative of Alaris' Request for Production Nos. 5 and 6.

5 Subject to and without waiving its specific and general objections, ICU
6 responds as follows: ICU will produce relevant, responsive, non-privileged
7 documents in its possession, custody or control.

8 **REQUEST FOR PRODUCTION NO. 8:**

9 All documents referring or relating to any prior art mentioned in the Subject
10 Patent or any Counterpart Patent, or in the respective applications or file histories of
11 the Subject Patent or any Counterpart Patent.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

13 In addition to its General Objections, ICU objects to this request to the extent
14 that it seeks information protected by the attorney-client privilege and/or the work-
15 product doctrine, or any other lawfully recognized privilege or immunity.

16 ICU objects to producing confidential documents called for by this Request to
17 the extent that it seeks information that is confidential to ICU or to third parties.

18 ICU further objects to this request on the grounds that it is overbroad and
19 seeks information that is not relevant to the claim or defense of any party. For
20 example, the phrase "any Counterpart Patent" is overbroad and seeks information
21 that is not relevant to the claim or defense of any party. ICU objects to providing
22 any information relating to pending patent applications as the confidentiality of such
23 applications outweighs any potential relevance to this action.

24 Further, ICU objects to this request as unduly burdensome to the extent it is
25 duplicative of Alaris' Request for Production No. 5.

26 Subject to and without waiving its specific and general objections, ICU
27 responds as follows: ICU will produce relevant, responsive, non-privileged
28 documents in its possession, custody or control.

1 **REQUEST FOR PRODUCTION NO. 9:**

2 All documents constituting, referring or relating to any prior art search or
3 investigation conducted in connection with the Subject Patent or any Counterpart
4 Patent, or with any alleged invention described or claimed in the Subject Patent,
5 including, without limitation, all patents, publications, and other prior art located or
6 identified through any such search or investigation.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

8 In addition to its General Objections, ICU objects to this request to the extent
9 that it seeks information protected by the attorney-client privilege and/or the work-
10 product doctrine, or any other lawfully recognized privilege or immunity.

11 ICU objects to producing confidential documents called for by this Request to
12 the extent that it seeks information that is confidential to ICU or to third parties.

13 ICU objects to this request as premature to the extent it calls for expert
14 disclosures.

15 Further, ICU objects to this request as unduly burdensome to the extent it is
16 duplicative of Alaris' Request for Production No. 5.

17 ICU further objects to this request on the grounds that it is overbroad and
18 unduly burdensome. ICU objects that the terms "any Counterpart Patent" and
19 "described" render this request vague, ambiguous, overbroad and this request seeks
20 information that is not relevant to the claim or defense of any party. Furthermore,
21 the term "described" calls for a legal conclusion as what constitutes an invention –
22 inventions are defined by claims. ICU objects to providing any information relating
23 to pending patent applications as the confidentiality of such applications outweighs
24 any potential relevance to this action.

25 Subject to and without waiving its specific and general objections, ICU
26 responds as follows: ICU will produce relevant, responsive, non-privileged
27 documents in its possession, custody or control.

28 SAN098317

SA CV 04-689 AHS (V ркx)

-12-

ICU'S RESPONSE TO ALARIS' REQUESTS
FOR PRODUCTION NOS. 1-46

EXHIBIT 3
Page 13 of 39

1 **REQUEST FOR PRODUCTION NO. 10:**

2 All documents referring or relating to the conception, research, design,
3 development, testing, manufacturing, marketing, or sale of any product allegedly
4 covered by any claim of the Subject Patent, e.g., the Clave and any predecessor
5 products, whether commercially available or not, regardless of name.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

7 In addition to its General Objections, ICU objects to this request to the extent
8 that it seeks information protected by the attorney-client privilege and/or the work-
9 product doctrine, or any other lawfully recognized privilege or immunity.

10 ICU objects to producing confidential documents called for by this Request to
11 the extent that it seeks information that is confidential to ICU or to third parties.

12 ICU further objects to this request on the grounds that it is vague and
13 ambiguous. For example, the term "predecessor" is vague and ambiguous.

14 ICU objects to the request as seeking information that is not relevant to the
15 claim or defense of any party.

16 Further, ICU objects to this request as unduly burdensome to the extent it is
17 duplicative of Alaris' Request for Production Nos. 1-3.

18 ICU objects to the extent this request calls for a legal conclusion as the
19 request requires ICU to draw a legal conclusion as to what products are "covered by
20 any claim" of the '509 patent.

21 Subject to and without waiving its specific and general objections, ICU
22 responds as follows: ICU will produce relevant, responsive, non-privileged
23 documents in its possession, custody or control.

24 **REQUEST FOR PRODUCTION NO. 11:**

25 All documents referring or relating to any product, whether commercially
26 available or not, that ICU contends is covered by any claim of the Subject Patent.

27

28

SAN98317 1

SA CV 04-689 AHS (V ркx)

-13-

ICU'S RESPONSE TO ALARIS' REQUESTS
FOR PRODUCTION NOS. 1-46

EXHIBIT 3
Page 14 of 39

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

2 In addition to its General Objections, ICU objects to this request to the extent
3 that it seeks information protected by the attorney-client privilege and/or the work-
4 product doctrine, or any other lawfully recognized privilege or immunity.

5 ICU objects to producing confidential documents called for by this Request to
6 the extent that it seeks information that is confidential to ICU or to third parties.

7 ICU objects to the request as seeking information that is not relevant to the
8 claim or defense of any party.

9 ICU objects to the extent this request calls for a legal conclusion as the
10 request requires ICU to draw a legal conclusion as to what products are "covered by
11 any claim" of the '509 patent.

12 Further, ICU objects to this request as unduly burdensome to the extent it is
13 duplicative of Alaris' Request for Production No. 10.

14 Subject to and without waiving its specific and general objections, ICU
15 responds as follows: ICU will produce relevant, responsive, non-privileged
16 documents in its possession, custody or control.

17 **REQUEST FOR PRODUCTION NO. 12:**

18 All documents referring or relating to the ownership of, or the assignment or
19 other transfer of any right, title or interest in the Subject Patent and any Counterpart
20 Patent.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

22 In addition to its General Objections, ICU objects to this request to the extent
23 that it seeks information protected by the attorney-client privilege and/or the work-
24 product doctrine, or any other lawfully recognized privilege or immunity.

25 ICU objects to producing confidential documents called for by this Request to
26 the extent that it seeks information that is confidential to ICU or to third parties.

27 ICU further objects to this request on the grounds that it is overbroad and
28 seeks information that is not relevant to the claim or defense of any party. For

1 example, the phrase "any Counterpart Patent" is overbroad and seeks information
2 that is not relevant to the claim or defense of any party. ICU objects to providing
3 any information relating to pending patent applications as the confidentiality of such
4 applications outweighs any potential relevance to this action.

5 Subject to and without waiving its specific and general objections, ICU
6 responds as follows: ICU will produce relevant, responsive, non-privileged
7 documents in its possession, custody or control.

8 **REQUEST FOR PRODUCTION NO. 13:**

9 All documents constituting, referring or relating to any license or sub-license
10 of, or any effort, request or refusal to license or sublicense, any right, title or interest
11 in the Subject Patent, any Counterpart Patent, or any alleged invention described or
12 claimed in the Subject Patent or any Counterpart Patent.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

14 In addition to its General Objections, ICU objects to this request to the extent
15 that it seeks information protected by the attorney-client privilege and/or the work-
16 product doctrine, or any other lawfully recognized privilege or immunity.

17 ICU objects to producing confidential documents called for by this Request to
18 the extent that it seeks information that is confidential to ICU or to third parties.

19 ICU further objects to this request on the grounds that it is overbroad and
20 unduly burdensome. ICU objects that the terms "any Counterpart Patent" and
21 "described" render this request vague, ambiguous, overbroad and this request seeks
22 information that is not relevant to the claim or defense of any party. Furthermore,
23 the term "described" calls for a legal conclusion as what constitutes an invention –
24 inventions are defined by claims. ICU objects to providing any information relating
25 to pending patent applications as the confidentiality of such applications outweighs
26 any potential relevance to this action.

27
28 SAN/98317 1

SA CV 04-689 AHS (VBKx)

-15-

ICU'S RESPONSE TO ALARIS' REQUESTS
FOR PRODUCTION NOS. 1-46

EXHIBIT 3
Page 16 of 39

1 Subject to and without waiving its specific and general objections, ICU
2 responds as follows: ICU will produce relevant, responsive, non-privileged
3 documents in its possession, custody or control.

4 **REQUEST FOR PRODUCTION NO. 14:**

5 All documents referring or relating to, or commenting upon the significance,
6 importance or merit, or lack thereof, of any alleged invention described or claimed
7 in the Subject Patent or any Counterpart Patent.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

9 In addition to its General Objections, ICU objects to this request to the extent
10 that it seeks information protected by the attorney-client privilege and/or the work-
11 product doctrine, or any other lawfully recognized privilege or immunity.

12 ICU objects to producing confidential documents called for by this Request to
13 the extent that it seeks information that is confidential to ICU or to third parties.

14 ICU further objects to this request on the grounds that it is overbroad and
15 unduly burdensome. ICU objects that the terms "any Counterpart Patent" and
16 "described" render this request vague, ambiguous, overbroad and this request seeks
17 information that is not relevant to the claim or defense of any party. Furthermore,
18 the term "described" calls for a legal conclusion as what constitutes an invention –
19 inventions are defined by claims. ICU objects to providing any information relating
20 to pending patent applications as the confidentiality of such applications outweighs
21 any potential relevance to this action.

22 ICU objects to this request as premature to the extent it calls for expert
23 disclosures.

24 ICU further objects to this request on the grounds that it is vague and
25 ambiguous. For example, the phrase "significance, importance or merit" is vague
26 and ambiguous.

27
28

SA CV 04-689 AHS (VBKx)

-16-

ICU'S RESPONSE TO ALARIS' REQUESTS
FOR PRODUCTION NOS. 1-46

EXHIBIT 3
Page 17 of 39

1 Subject to and without waiving its specific and general objections, ICU
2 responds as follows: ICU will produce relevant, responsive, non-privileged
3 documents in its possession, custody or control.

4 **REQUEST FOR PRODUCTION NO. 15:**

5 All documents referring or relating to the validity, enforceability, or scope of
6 the Subject Patent or any Counterpart Patent, including, without limitation, all
7 documents and things (including opinions, search reports, correspondence with
8 searchers, prior art collections, internal company communications, and minutes or
9 notes of meetings) referring or relating to any search, analysis, investigation or study
10 regarding the validity, enforceability, or scope of the Subject Patent or any
11 Counterpart Patent.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

13 In addition to its General Objections, ICU objects to this request to the extent
14 that it seeks information protected by the attorney-client privilege and/or the work-
15 product doctrine, or any other lawfully recognized privilege or immunity.

16 ICU objects to producing confidential documents called for by this Request to
17 the extent that it seeks information that is confidential to ICU or to third parties.

18 ICU further objects to this request on the grounds that it is overbroad and
19 seeks information that is not relevant to the claim or defense of any party. For
20 example, the phrase "any Counterpart Patent" is overbroad and seeks information
21 that is not relevant to the claim or defense of any party. ICU objects to providing
22 any information relating to pending patent applications as the confidentiality of such
23 applications outweighs any potential relevance to this action.

24 ICU objects to this request as premature to the extent it calls for expert
25 disclosures.

26 Subject to and without waiving its specific and general objections, ICU
27 responds as follows: ICU will produce relevant, responsive, non-privileged
28 documents in its possession, custody or control.

SAN08317 1

SA CV 04-689 AHS (VBKx)

-17-

ICU'S RESPONSE TO ALARIS' REQUESTS
FOR PRODUCTION NOS. 1-46

1 **REQUEST FOR PRODUCTION NO. 16:**

2 All documents referring or relating to the enforcement of the Subject Patent or
3 any Counterpart Patent including, without limitation, all documents and things
4 (including, without limitation, complaints, answers, pleadings, affidavits, deposition
5 transcripts, interrogatory responses, responses to requests for admissions,
6 memoranda, briefs, correspondence among parties and so forth) referring or relating
7 to any civil action (other than this civil action), Patent and Trademark Office
8 proceeding, International Trade Commission proceeding or other proceeding,
9 whether inside or outside of the United States, involving any alleged infringement of
10 the Subject Patent or any Counterpart Patent.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

12 In addition to its General Objections, ICU objects to this request to the extent
13 that it seeks information protected by the attorney-client privilege and/or the work-
14 product doctrine, or any other lawfully recognized privilege or immunity.

15 ICU objects to producing confidential documents called for by this Request to
16 the extent that it seeks information that is confidential to ICU or to third parties.

17 ICU further objects to this request on the grounds that it is overbroad and
18 seeks information that is not relevant to the claim or defense of any party. For
19 example, the phrase "any Counterpart Patent" is overbroad and seeks information
20 that is not relevant to the claim or defense of any party. ICU objects to providing
21 any information relating to pending patent applications as the confidentiality of such
22 applications outweighs any potential relevance to this action.

23 ICU further objects to this request on the grounds that it is unduly
24 burdensome and oppressive to the extent it seeks information that is publicly
25 available.

26 **REQUEST FOR PRODUCTION NO. 17:**

27 All documents referring or relating to ICU's actual or prospective claims that
28 ALARIS has infringed one or more claims of the Subject Patent or Counterpart

1 Patent, including, without limitation, all documents and things referring or relating
2 to any tests, investigations, or experiments regarding any products made, sold,
3 marketed or promoted by ALARIS ever suspected of infringing, or now or later to
4 be alleged to have infringed one or more of such claims.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

6 In addition to its General Objections, ICU objects to this request to the extent
7 that it seeks information protected by the attorney-client privilege and/or the work-
8 product doctrine, or any other lawfully recognized privilege or immunity. For
9 example, the phrase "prospective claims" seeks information protected by the
10 attorney-client privilege and/or the work-product doctrine, to the extent such
11 information even exists.

12 ICU objects to producing confidential documents called for by this Request to
13 the extent that it seeks information that is confidential to ICU or to third parties.

14 ICU further objects to this request on the grounds that it is overbroad and
15 seeks information that is not relevant to the claim or defense of any party. For
16 example, the phrase "any Counterpart Patent" is overbroad and seeks information
17 that is not relevant to the claim or defense of any party. ICU objects to providing
18 any information relating to pending patent applications as the confidentiality of such
19 applications outweighs any potential relevance to this action.

20 ICU further objects to this request on the grounds that it is vague and
21 ambiguous. For example, the phrase "ever suspected" is vague and ambiguous.

22 ICU objects to this request as premature to the extent it calls for expert
23 disclosures.

24 Subject to and without waiving its specific and general objections, ICU
25 responds as follows: ICU will produce relevant, responsive, non-privileged
26 documents in its possession, custody or control.

27 SAN/98317

28 SA CV 04-689 AHS (V ркx)

-19-

ICU'S RESPONSE TO ALARIS' REQUESTS
FOR PRODUCTION NOS. 1-46

1 **REQUEST FOR PRODUCTION NO. 18:**

2 All documents constituting, referring or relating to any license obtained or
3 requested by ICU pertaining to the Subject Patent or any Counterpart Patent.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

5 In addition to its General Objections, ICU objects to this request to the extent
6 that it seeks information protected by the attorney-client privilege and/or the work-
7 product doctrine, or any other lawfully recognized privilege or immunity.

8 ICU objects to producing confidential documents called for by this Request to
9 the extent that it seeks information that is confidential to ICU or to third parties.

10 ICU further objects to this request on the grounds that it is overbroad and
11 seeks information that is not relevant to the claim or defense of any party. For
12 example, the phrase "any Counterpart Patent" is overbroad and seeks information
13 that is not relevant to the claim or defense of any party. ICU objects to providing
14 any information relating to pending patent applications as the confidentiality of such
15 applications outweighs any potential relevance to this action.

16 Further, Request for Production No. 18 is unduly burdensome because it is
17 duplicative of Alaris' Request for Production No. 13.

18 ICU further objects to this request on the grounds that it is vague and
19 ambiguous. For example, the phrase "pertaining" is vague and ambiguous.

20 Subject to and without waiving its specific and general objections, ICU
21 responds as follows: ICU will produce relevant, responsive, non-privileged
22 documents in its possession, custody or control.

23 **REQUEST FOR PRODUCTION NO. 19:**

24 All documents referring or relating to the first public display, disclosure, or
25 use of any alleged invention described or claimed in the Subject Patent.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

2 In addition to its General Objections, ICU objects to this request to the extent
3 that it seeks information protected by the attorney-client privilege and/or the work-
4 product doctrine, or any other lawfully recognized privilege or immunity.

5 ICU objects to producing confidential documents called for by this Request to
6 the extent that it seeks information that is confidential to ICU or to third parties.

7 ICU further objects to this request on the grounds that it is overbroad and
8 unduly burdensome. ICU objects that the term "described" renders this request
9 vague, ambiguous, overbroad and this request seeks information that is not relevant
10 to the claim or defense of any party. Furthermore, the term "described" calls for a
11 legal conclusion as what constitutes an invention – inventions are defined by claims.

12 Further, Request for Production No. 19 is unduly burdensome because it is
13 duplicative of Alaris' Request for Production No. 1.

14 Subject to and without waiving its specific and general objections, ICU
15 responds as follows: ICU will produce relevant, responsive, non-privileged
16 documents in its possession, custody or control.

17 **REQUEST FOR PRODUCTION NO. 20:**

18 All documents referring or relating to the first sale or offer for sale of any
19 alleged invention described or claimed in the Subject Patent, or any product
20 embodying any alleged invention described or claimed in the Subject Patent.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

22 In addition to its General Objections, ICU objects to this request to the extent
23 that it seeks information protected by the attorney-client privilege and/or the work-
24 product doctrine, or any other lawfully recognized privilege or immunity.

25 ICU objects to producing confidential documents called for by this Request to
26 the extent that it seeks information that is confidential to ICU or to third parties.

27 ICU further objects to this request on the grounds that it is overbroad and
28 unduly burdensome. ICU objects that the term "described" renders this request

SAN98311

SA CV 04-689 AHS (VBKx)

-21-

ICU'S RESPONSE TO ALARIS' REQUESTS
FOR PRODUCTION NOS. 1-46

1 vague, ambiguous, overbroad and this request seeks information that is not relevant
2 to the claim or defense of any party. Furthermore, the term "described" calls for a
3 legal conclusion as what constitutes an invention – inventions are defined by claims.

4 Further, ICU objects to this request as unduly burdensome to the extent it is
5 duplicative of Alaris' Request for Production No. 1.

6 Subject to and without waiving its specific and general objections, ICU
7 responds as follows: ICU will produce relevant, responsive, non-privileged
8 documents in its possession, custody or control.

9 **REQUEST FOR PRODUCTION NO. 21:**

10 All documents referring or relating to the SmartSite® or SmartSite Plus®
11 products.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

13 In addition to its General Objections, ICU objects to this request to the extent
14 that it seeks information protected by the attorney-client privilege and/or the work-
15 product doctrine, or any other lawfully recognized privilege or immunity.

16 ICU objects to producing confidential documents called for by this Request to
17 the extent that it seeks information that is confidential to ICU or to third parties.

18 ICU further objects to this request on the grounds that it is overbroad and
19 seeks information that is not relevant to the claim or defense of any party.

20 Subject to and without waiving its specific and general objections, ICU
21 responds as follows: ICU will produce relevant, responsive, non-privileged
22 documents in its possession, custody or control.

23 **REQUEST FOR PRODUCTION NO. 22:**

24 All documents referring or relating to ALARIS's current or past needlefree or
25 needleless valve products, including any and all correspondence or communications
26 among or between ICU and its distributors and/or other third parties, any and all
27 press or marketing releases, and any and all documents referring or relating to any

1 internal interdepartmental or intradepartmental correspondence, communications or
2 memoranda.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

4 In addition to its General Objections, ICU objects to this request to the extent
5 that it seeks information protected by the attorney-client privilege and/or the work-
6 product doctrine, or any other lawfully recognized privilege or immunity.

7 ICU objects to producing confidential documents called for by this Request to
8 the extent that it seeks information that is confidential to ICU or to third parties.

9 ICU further objects to this request on the grounds that it is overbroad and
10 seeks information that is not relevant to the claim or defense of any party.

11 ICU further objects to this request on the grounds that it is vague and
12 ambiguous. For example, the term "past" has not been defined and is vague and
13 ambiguous. Further, the terms "needlefree" and "needleless" are vague and
14 ambiguous to the extent Alaris meant to give them different meanings.

15 Subject to and without waiving its specific and general objections, ICU
16 responds as follows: ICU will produce relevant, responsive, non-privileged
17 documents in its possession, custody or control.

18 **REQUEST FOR PRODUCTION NO. 23:**

19 All documents constituting, referring or relating to any internal,
20 interdepartmental, or intradepartmental correspondence, communications, or
21 memoranda that refer or relate to the Subject Patent or any Counterpart Patent or any
22 alleged invention described or claimed in said patents.

23 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

24 In addition to its General Objections, ICU objects to this request to the extent
25 that it seeks information protected by the attorney-client privilege and/or the work-
26 product doctrine, or any other lawfully recognized privilege or immunity.

27 ICU objects to producing confidential documents called for by this Request to
28 the extent that it seeks information that is confidential to ICU or to third parties.

1 ICU further objects to this request on the grounds that it is overbroad and
2 unduly burdensome. ICU objects that the terms "any Counterpart Patent" and
3 "described" render this request vague, ambiguous, overbroad and this request seeks
4 information that is not relevant to the claim or defense of any party. Furthermore,
5 the term "described" calls for a legal conclusion as what constitutes an invention –
6 inventions are defined by claims. ICU objects to providing any information relating
7 to pending patent applications as the confidentiality of such applications outweighs
8 any potential relevance to this action.

9 Subject to and without waiving its specific and general objections, ICU
10 responds as follows: ICU will produce relevant, responsive, non-privileged
11 documents in its possession, custody or control.

12 **REQUEST FOR PRODUCTION NO. 24:**

13 All documents constituting, referring or relating to correspondence or
14 communications among ICU employees, or between ICU and any third party, that
15 refer or relate to the Subject Patent or any Counterpart Patent of any alleged
16 invention described or claimed in said patents.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

18 In addition to its General Objections, ICU objects to this request to the extent
19 that it seeks information protected by the attorney-client privilege and/or the work-
20 product doctrine, or any other lawfully recognized privilege or immunity.

21 ICU objects to producing confidential documents called for by this Request to
22 the extent that it seeks information that is confidential to ICU or to third parties.

23 ICU further objects to this request on the grounds that it is overbroad and
24 unduly burdensome. ICU objects that the terms "any Counterpart Patent" and
25 "described" render this request vague, ambiguous, overbroad and this request seeks
26 information that is not relevant to the claim or defense of any party. Furthermore,
27 the term "described" calls for a legal conclusion as what constitutes an invention –
28 inventions are defined by claims. ICU objects to providing any information relating

1. to pending patent applications as the confidentiality of such applications outweighs
2. any potential relevance to this action.

3. Further, ICU object to this request as unduly burdensome to the extent it is
4. duplicative of Alaris' Request for Production No. 23.

5. Subject to and without waiving its specific and general objections, ICU
6. responds as follows: ICU will produce relevant, responsive, non-privileged
7. documents in its possession, custody or control.

8. **REQUEST FOR PRODUCTION NO. 25:**

9. All documents referring or relating to the marking of any products with the
10. number of the Subject Patent.

11. **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

12. In addition to its General Objections, ICU objects to this request to the extent
13. that it seeks information protected by the attorney-client privilege and/or the work-
14. product doctrine, or any other lawfully recognized privilege or immunity.

15. ICU objects to producing confidential documents called for by this Request to
16. the extent that it seeks information that is confidential to ICU or to third parties.

17. Subject to and without waiving its specific and general objections, ICU
18. responds as follows: ICU will produce relevant, responsive, non-privileged
19. documents in its possession, custody or control.

20. **REQUEST FOR PRODUCTION NO. 26:**

21. All documents showing gross and net sales and/or licenses of products that
22. ICU contends are covered by any claim of the Subject Patent, including the numbers
23. of products sold or otherwise distributed and the dollar amounts of such sales.

24. **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

25. In addition to its General Objections, ICU objects to this request to the extent
26. that it seeks information protected by the attorney-client privilege and/or the work-
27. product doctrine, or any other lawfully recognized privilege or immunity.

1 ICU objects to producing confidential documents called for by this Request to
2 the extent that it seeks information that is confidential to ICU or to third parties.

3 ICU further objects to this request on the grounds that it is overbroad and
4 seeks information that is not relevant to the claim or defense of any party. For
5 example, this request is not date limited and is therefore overbroad.

6 ICU further objects to this request on the grounds that is vague and
7 ambiguous. For example, the term "licenses" is vague and ambiguous.

8 ICU objects to the extent this request calls for a legal conclusion as the
9 request requires ICU to draw a legal conclusion as to what products are "covered by
10 any claim" of the '509 patent.

11 Subject to and without waiving its specific and general objections, ICU
12 responds as follows: ICU will produce relevant, responsive, non-privileged
13 documents in its possession, custody or control.

14 **REQUEST FOR PRODUCTION NO. 27:**

15 All design, engineering, manufacturing, and marketing documents that refer
16 or relate to ICU's Clave product, including all predecessor and related products
17 regardless of name, whether commercially available or not.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

19 In addition to its General Objections, ICU objects to this request to the extent
20 that it seeks information protected by the attorney-client privilege and/or the work-
21 product doctrine, or any other lawfully recognized privilege or immunity.

22 ICU objects to producing confidential documents called for by this Request to
23 the extent that it seeks information that is confidential to ICU or to third parties.

24 ICU objects that this request is overbroad, unduly burdensome and seeks
25 information that is not relevant to the claim or defense of any party.

26 ICU further objects to this request on the grounds that is vague and
27 ambiguous. For example, the terms "predecessor" and "related products" are vague
28 and ambiguous.

1 Further, ICU object to this request as unduly burdensome to the extent it is
2 duplicative of Alaris' Request for Production No. 1-3.

3 Subject to and without waiving its specific and general objections, ICU
4 responds as follows: ICU will produce relevant, responsive, non-privileged
5 documents in its possession, custody or control.

6 **REQUEST FOR PRODUCTION NO. 28:**

7 All documents constituting, referring or relating to communications to or from
8 the FDA regarding ICU's Clave product (and any predecessor or related products
9 regardless of name), including all 510(k), PMA, PMAS, and clinical protocol and
10 test result documents.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

12 In addition to its General Objections, ICU objects to this request to the extent
13 that it seeks information protected by the attorney-client privilege and/or the work-
14 product doctrine, or any other lawfully recognized privilege or immunity.

15 ICU objects to producing confidential documents called for by this Request to
16 the extent that it seeks information that is confidential to ICU or to third parties.

17 ICU objects that this request is overbroad, unduly burdensome and seeks
18 information that is not relevant to the claim or defense of any party.

19 ICU further objects to this request on the grounds that is vague and
20 ambiguous. For example, the terms "predecessor" and "related products" are vague
21 and ambiguous. Further, the terms "PMA," "PMAS," and the phrase "clinical
22 protocol and test result documents" are vague and ambiguous because they are not
23 defined.

24 Subject to and without waiving its specific and general objections, ICU
25 responds as follows: ICU will produce relevant, responsive, non-privileged
26 documents in its possession, custody or control.

1 **REQUEST FOR PRODUCTION NO. 29:**

2 All documents referring or relating to the possibility of an ICU needlefree or
3 needleless valve that would not have or require a spike or spike element (as
4 described in the 509 Patent) as part of the valve design.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

6 In addition to its General Objections, ICU objects to this request to the extent
7 that it seeks information protected by the attorney-client privilege and/or the work-
8 product doctrine, or any other lawfully recognized privilege or immunity.

9 ICU objects to producing confidential documents called for by this Request to
10 the extent that it seeks information that is confidential to ICU or to third parties.

11 ICU objects that this request is overbroad, unduly burdensome and seeks
12 information that is not relevant to the claim or defense of any party.

13 ICU further objects to this request on the grounds that it is overbroad and
14 seeks information that is not relevant to the claim or defense of any party.

15 ICU objects to this request as premature to the extent it calls for expert
16 disclosures.

17 ICU further objects to this request on the grounds that it is vague and
18 ambiguous. For example, the terms "possibility," "needlefree" and "needleless" are
19 vague and ambiguous.

20 Subject to and without waiving its specific and general objections, ICU
21 responds as follows: ICU will produce relevant, responsive, non-privileged
22 documents in its possession, custody or control.

23 **REQUEST FOR PRODUCTION NO. 30:**

24 All documents referring or relating to any sale or offer to sell of the Clave on
25 or before December 1, 1991.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

2 In addition to its General Objections, ICU objects to this request to the extent
3 that it seeks information protected by the attorney-client privilege and/or the work-
4 product doctrine, or any other lawfully recognized privilege or immunity.

5 Subject to and without waiving its specific and general objections, ICU
6 responds as follows: no responsive documents exist.

7 **REQUEST FOR PRODUCTION NO. 31:**

8 All documents referring or relating to ICU's representation for Trademark
9 Registration No. 1,882,887 that ICU's first use of the mark CLAVE for "medical
10 connectors and component parts thereof for use in transferring fluids" was in
11 September 1991 (see Ex. 8 to the 7/16/04 Declaration of Christopher D. Bright).

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

13 In addition to its General Objections, ICU objects to this request to the extent
14 that it seeks information protected by the attorney-client privilege and/or the work-
15 product doctrine, or any other lawfully recognized privilege or immunity.

16 ICU objects to producing confidential documents called for by this Request to
17 the extent that it seeks information that is confidential to ICU or to third parties.

18 ICU further objects to this request on the grounds that it is overbroad and
19 seeks information that is not relevant to the claim or defense of any party.

20 Subject to and without waiving its specific and general objections, ICU
21 responds as follows: ICU will produce relevant, responsive, non-privileged
22 documents in its possession, custody or control.

23 **REQUEST FOR PRODUCTION NO. 32:**

24 All documents referring or relating to or constituting the design history file
25 for the Clave.

26
27
28

SA CV 04-689 AHS (VBKx)

-29-

ICU'S RESPONSE TO ALARIS' REQUESTS
FOR PRODUCTION NOS 1-46

EXHIBIT 3
Page 30 of 39

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

2 In addition to its General Objections, ICU objects to this request to the extent
3 that it seeks information protected by the attorney-client privilege and/or the work-
4 product doctrine, or any other lawfully recognized privilege or immunity.

5 ICU objects to producing confidential documents called for by this Request to
6 the extent that it seeks information that is confidential to ICU or to third parties.

7 ICU further objects to this request on the grounds that it is vague and
8 ambiguous. For example, the phrase "design history file" is vague and ambiguous.

9 Further, ICU object to this request as unduly burdensome to the extent it is
10 duplicative of Alaris' Request for Production No. 27.

11 Subject to and without waiving its specific and general objections, ICU
12 responds as follows: ICU will produce relevant, responsive, non-privileged
13 documents in its possession, custody or control.

14 **REQUEST FOR PRODUCTION NO. 33:**

15 All documents on which ICU will rely in this litigation.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

17 In addition to its General Objections, ICU objects to this request to the extent
18 that it seeks information protected by the attorney-client privilege and/or the work-
19 product doctrine, or any other lawfully recognized privilege or immunity.

20 ICU objects to producing confidential documents called for by this Request to
21 the extent that it seeks information that is confidential to ICU or to third parties.

22 ICU further objects to this request on the grounds that it is vague, ambiguous
23 and overbroad.

24 ICU objects to this request as premature to the extent it calls for expert
25 disclosures.

26 Subject to and without waiving its specific and general objections, ICU
27 responds as follows: ICU will produce relevant, responsive, non-privileged
28 documents in its possession, custody or control.

1 **REQUEST FOR PRODUCTION NO. 34:**

2 All documents referring or relating to ICU's claims and allegations that this
3 lawsuit could not be brought any earlier than June 16, 2004, i.e., the date ICU's
4 Complaint was filed. (See, e.g., ICU's 6/18/04 Ex Parte Application For A TRO and
5 Order To Show Cause Why A Preliminary Injunction Should Not Issue at page 1;
6 ICU's 6/23/04 Reply To ALARIS's Opposition To ICU's Ex Parte Application For
7 A TRO and Order To Show Cause Why A Preliminary Injunction Should Not Issue
8 at pages 1-2.)

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

10 In addition to its General Objections, ICU objects to this request to the extent
11 that it seeks information protected by the attorney-client privilege and/or the work-
12 product doctrine, or any other lawfully recognized privilege or immunity.

13 ICU objects to producing confidential documents called for by this Request to
14 the extent that it seeks information that is confidential to ICU or to third parties.

15 ICU further objects to this request on the grounds that the phrase "ICU's
16 claims and allegations that this lawsuit could not be brought any earlier than June
17 16, 2004" is a misstatement of ICU's pleadings to which Request for Production No
18 34 cites.

19 ICU further objects to this request on the grounds that it is vague and
20 ambiguous.

21 Subject to and without waiving its specific and general objections, ICU
22 responds as follows: ICU will produce relevant, responsive, non-privileged
23 documents in its possession, custody or control.

24 **REQUEST FOR PRODUCTION NO. 35:**

25 All documents referring or relating to the construction, interpretation, or scope
26 of any patent claim or term in the Subject Patent or any Counterpart Patent.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

2 In addition to its General Objections, ICU objects to this request to the extent
3 that it seeks information protected by the attorney-client privilege and/or the work-
4 product doctrine, or any other lawfully recognized privilege or immunity.

5 ICU objects to producing confidential documents called for by this Request to
6 the extent that it seeks information that is confidential to ICU or to third parties.

7 ICU further objects to this request on the grounds that it is overbroad and
8 seeks information that is not relevant to the claim or defense of any party. For
9 example, the phrase "any Counterpart Patent" is overbroad and seeks information
10 that is not relevant to the claim or defense of any party. ICU objects to providing
11 any information relating to pending patent applications as the confidentiality of such
12 applications outweighs any potential relevance to this action.

13 ICU objects to this request as premature to the extent it calls for expert
14 disclosures.

15 Subject to and without waiving its specific and general objections, ICU
16 responds as follows: ICU will produce relevant, responsive, non-privileged
17 documents in its possession, custody or control.

18 **REQUEST FOR PRODUCTION NO. 36:**

19 Each dictionary, treatise, publication, or other document that supports, tends
20 to support, refutes, or tends to refute ICU's construction of any term(s) of any of the
21 claims of the Subject Patent or any Counterpart Patent.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

23 In addition to its General Objections, ICU objects to this request to the extent
24 that it seeks information protected by the attorney-client privilege and/or the work-
25 product doctrine, or any other lawfully recognized privilege or immunity.

26 ICU objects to producing confidential documents called for by this Request to
27 the extent that it seeks information that is confidential to ICU or to third parties.

1 ICU further objects to this request on the grounds that it is overbroad and
2 seeks information that is not relevant to the claim or defense of any party. For
3 example, the phrase "any Counterpart Patent" is overbroad and seeks information
4 that is not relevant to the claim or defense of any party. ICU objects to providing
5 any information relating to pending patent applications as the confidentiality of such
6 applications outweighs any potential relevance to this action.

7 ICU objects to this request as premature to the extent it calls for expert
8 disclosures.

9 Subject to and without waiving its specific and general objections, ICU
10 responds as follows: ICU will produce relevant, responsive, non-privileged
11 documents in its possession, custody or control.

12 **REQUEST FOR PRODUCTION NO. 37:**

13 All documents that ICU contends are sufficient to show the level of ordinary
14 skill in the art for any claim of the Subject Patent or any Counterpart Patent.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

16 In addition to its General Objections, ICU objects to this request to the extent
17 that it seeks information protected by the attorney-client privilege and/or the work-
18 product doctrine, or any other lawfully recognized privilege or immunity.

19 ICU objects to producing confidential documents called for by this Request to
20 the extent that it seeks information that is confidential to ICU or to third parties.

21 ICU further objects to this request on the grounds that it is overbroad and
22 seeks information that is not relevant to the claim or defense of any party. For
23 example, the phrase "any Counterpart Patent" is overbroad and seeks information
24 that is not relevant to the claim or defense of any party. ICU objects to providing
25 any information relating to pending patent applications as the confidentiality of such
26 applications outweighs any potential relevance to this action.

27 ICU objects to this request as premature to the extent it calls for expert
28 disclosures.

SAN98317 1

SA CV 04-689 AHS (V ркx)

-33-

ICU'S RESPONSE TO ALARIS' REQUESTS
FOR PRODUCTION NOS. 1-46

EXHIBIT 3
Page 34 of 39

1 Subject to and without waiving its specific and general objections, ICU
2 responds as follows: ICU will produce relevant, responsive, non-privileged
3 documents in its possession, custody or control.

4 **REQUEST FOR PRODUCTION NO. 38:**

5 All documents that ICU contends are sufficient to show commercial success
6 or lack thereof for products incorporating any alleged invention in the Subject
7 Patent.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

9 In addition to its General Objections, ICU objects to this request to the extent
10 that it seeks information protected by the attorney-client privilege and/or the work-
11 product doctrine, or any other lawfully recognized privilege or immunity.

12 ICU objects to producing confidential documents called for by this Request to
13 the extent that it seeks information that is confidential to ICU or to third parties.

14 ICU further objects to this request on the grounds that it is overbroad, unduly
15 burdensome and seeks information that is not relevant to the claim or defense of any
16 party.

17 ICU further objects to this request on the grounds that it is vague and
18 ambiguous. For example, the term "incorporating" is vague and ambiguous.

19 ICU objects to this request as premature to the extent it calls for expert
20 disclosures.

21 Subject to and without waiving its specific and general objections, ICU
22 responds as follows: ICU will produce relevant, responsive, non-privileged
23 documents in its possession, custody or control.

24 **REQUEST FOR PRODUCTION NO. 39:**

25 All documents that ICU contends are sufficient to show objective indicia or
26 "secondary considerations" (including but not limited to commercial success, failure
27 of others, long-felt need, and industry acquiescence) concerning any claim of the
28 Subject Patent.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

2 In addition to its General Objections, ICU objects to this request as vague and
3 ambiguous.

4 ICU objects to producing confidential documents called for by this Request to
5 the extent that it seeks information that is confidential to ICU or to third parties.

6 ICU objects to this request as premature to the extent it calls for expert
7 disclosures.

8 Subject to and without waiving its specific and general objections, ICU
9 responds as follows: ICU will produce relevant, responsive, non-privileged
10 documents in its possession, custody or control.

11 **REQUEST FOR PRODUCTION NO. 40:**

12 ; All organizational charts sufficient to demonstrate the general organization
13 and reporting structure of ICU from the time ICU began to develop the Clave to the
14 present.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 40:**

16 In addition to its General Objections, ICU objects to producing confidential
17 documents called for by this Request to the extent that it seeks information that is
18 confidential to ICU or to third parties.

19 Subject to and without waiving its specific and general objections, ICU
20 responds as follows: ICU will produce relevant, responsive, non-privileged
21 documents in its possession, custody or control.

22 **REQUEST FOR PRODUCTION NO. 41:**

23 Produce representative samples of all packaging, labeling, products,
24 instruction manuals, price lists, brochures, and/or advertising bearing the patent
25 number of the Subject Patent.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 41:**

27 In addition to its General Objections, ICU objects to this request on the
28 grounds that it is overbroad.

SAN98317 1

SA CV 04-689 AHS (VBKx)

-35-

ICU'S RESPONSE TO ALARIS' REQUESTS
FOR PRODUCTION NOS. 1-46

EXHIBIT 3
Page 36 of 39

1 ICU objects to producing confidential documents called for by this Request to
2 the extent that it seeks information that is confidential to ICU or to third parties.

3 Subject to and without waiving its specific and general objections, ICU
4 responds as follows: ICU will produce relevant, responsive, non-privileged
5 documents in its possession, custody or control.

6 **REQUEST FOR PRODUCTION NO. 42:**

7 All documents and things referring or relating to ICU's document retention
8 policies.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

10 In addition to its General Objections, ICU objects to producing confidential
11 documents called for by this Request to the extent that it seeks information that is
12 confidential to ICU or to third parties.

13 Subject to and without waiving its specific and general objections, ICU
14 responds as follows: ICU will produce relevant, responsive, non-privileged
15 documents in its possession, custody or control.

16 **REQUEST FOR PRODUCTION NO. 43:**

17 All documents and things that supported or formed a basis for the preparation
18 of ICU's Complaint or ICU's Answer to ALARIS's Counterclaim.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

20 In addition to its General Objections, ICU objects to this request to the extent
21 that it seeks information protected by the attorney-client privilege and/or the work-
22 product doctrine, or any other lawfully recognized privilege or immunity.

23 ICU objects to producing confidential documents called for by this Request to
24 the extent that it seeks information that is confidential to ICU or to third parties.

25 Subject to and without waiving its specific and general objections, ICU
26 responds as follows: ICU will produce relevant, responsive, non-privileged
27 documents in its possession, custody or control.

1 **REQUEST FOR PRODUCTION NO. 44:**

2 All document and things identified in ICU's Initial disclosures.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

4 In addition to its General Objections, ICU objects to producing confidential
5 documents called for by this Request to the extent that it seeks information that is
6 confidential to ICU or to third parties.

7 Subject to and without waiving its specific and general objections, ICU
8 responds as follows: ICU will produce relevant, responsive, non-privileged
9 documents in its possession, custody or control.

10 **REQUEST FOR PRODUCTION NO. 45:**

11 All documents that support, tend to support, refute, or tend to refute ICU's
12 allegation of willful infringement.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 45:**

14 In addition to its General Objections, ICU objects to this request to the extent
15 that it seeks information protected by the attorney-client privilege and/or the work-
16 product doctrine, or any other lawfully recognized privilege or immunity.

17 ICU objects to producing confidential documents called for by this Request to
18 the extent that it seeks information that is confidential to ICU or to third parties.

19 Subject to and without waiving its specific and general objections, ICU
20 responds as follows: ICU will produce relevant, responsive, non-privileged
21 documents in its possession, custody or control.

22 **REQUEST FOR PRODUCTION NO. 46:**

23 All documents that support, tend to support, refute, or tend to refute ICU's
24 allegation that a TRO or preliminary injunction was appropriate in this case.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 46:**

26 In addition to its General Objections, ICU objects to this request to the extent
27 that it seeks information protected by the attorney-client privilege and/or the work-
28 product doctrine, or any other lawfully recognized privilege or immunity.

1 ICU objects to producing confidential documents called for by this Request to
2 the extent that it seeks information that is confidential to ICU or to third parties.

3 ICU objects to this request as premature to the extent it calls for expert
4 disclosures.

5 Subject to and without waiving its specific and general objections, ICU
6 responds as follows: ICU will produce relevant, responsive, non-privileged
7 documents in its possession, custody or control.

8

9

10 Dated: October 18, 2004

Paul Hastings Janofsky & Walker LLP



S. CHRISTIAN PLATT

14 Attorneys for Plaintiff and Counter-defendant
15 ICU MEDICAL, INC

EXHIBIT 4



August 6, 2001

Direct: (650) 849-4928
cplatt@mdbe.com

VIA FACSIMILE AND FEDEX

Mr. Kurt L. Grossman
Wood, Herron & Evans
2700 Carew Tower
Cincinnati, OH 45202

Medex v ICU, Southern District of Ohio
Case No. C2 99-679

Dear Kurt:

I write to notify you that ICU Medical elects to rely on opinions of counsel regarding non-infringement of Medex's Re '841 Patent as a defense to Medex's allegations of willful infringement. Enclosed by FedEx are documents relating to the opinions of counsel upon which ICU Medical intends to rely.

Very truly yours,

S. Christian Platt

Enclosures (by FedEx only)

ATTORNEYS AT LAW

3150 Porter Drive
Palo Alto, California 94304-1212
Tel (650) 849-4400 Fax (650) 849-4800
www.mccutchen.com

San Francisco
Los Angeles
Palo Alto
Walnut Creek

Affiliate Office
Taipei

EXHIBIT 4
Page 1 of 1

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EXHIBIT 100
F. in identification
Heller Clayton CSR 1187
Date 1/18/02
Witness LORI
Page 1 of 4



MEDEX, INC.,)
) Case No. C2 99-679
Plaintiff,)
) Judge Holschuh
vs.) Magistrate Judge Abel
ICU MEDICAL, INC.,)
)
Defendant)
<hr/> ICU MEDICAL, INC.,) THIRD SUPPLEMENTAL RESPONSE OF
) DEFENDANT ICU MEDICAL, INC. TO
Counterclaimant,) PLAINTIFF MEDEX, INC.'S FIRST SET
) OF INTERROGATORIES
vs) (NO. 5)
MEDEX, INC.,)
)
Counterdefendant)
<hr/>)

Pursuant to Rules 26(e)(2) and 33 of the Federal Rules of Civil Procedure, Defendant and Counterclaimant ICU MEDICAL, INC. ("ICU Medical") hereby supplements its response to Plaintiff Medex, Inc.'s First Set of Interrogatories (No. 5), as follows:

GENERAL OBJECTIONS

A. ICU Medical incorporates by reference the general objections set forth in
~~RESPONSES OF DEFENDANT ICU MEDICAL, INC. TO PLAINTIFF MEDEX, INC.'S~~
~~FIRST SET OF INTERROGATORIES (NOS. 1-14).~~

SPECIFIC RESPONSESINTERROGATORY NO. 5:

Will ICU Medical rely on an opinion or opinions of counsel, oral or written, as a defense against charges of willful infringement of the '841 patent? If so, fully identify each such opinion.

ORIGINAL RESPONSE TO INTERROGATORY NO. 5:

ICU Medical objects to this interrogatory to the extent that it calls for information that is protected by the attorney-client privilege and/or the work-product privilege. ICU Medical further objects to this interrogatory on the ground that it violates the Federal Rules of Civil Procedure and the Preliminary Pretrial Order entered by the Court on February 1, 2000 concerning the timing of disclosure of expert witnesses and their opinions and reports.

Subject to the foregoing general and specific objections, ICU Medical responds as follows:

ICU Medical has not, as of the date of these responses, decided whether to rely upon an opinion of counsel regarding the validity of the '841 patent and/or the infringement by ICU Medical thereof.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5:

ICU Medical objects to the phrase "opinion or opinions of counsel" as vague and ambiguous. Subject to the general and specific objections set forth in its original response, ICU Medical supplements its response as follows:

Yes. ICU-OH 37271-37309, ICU-OH 37310-37312, ICU-OH 37313-37316, ICU-OH 40381-40384, and the oral opinion memorialized in ICU-OH 37318-37320.

Dated: December 4, 2001

By: Mary Huser / AT
Edwin M. Baranowski (Ohio Bar Reg. No 0023032)
Trial Attorney for Defendant and Counterclaimant
ICU MEDICAL, INC.

PORTER, WRIGHT, MORRIS & ARTHUR, LLP
41 South High Street
Columbus, Ohio 43215
(614) 227-2188

and

Christopher B. Hockett (admitted *pro hac vice*)
Michael J. Shuster (admitted *pro hac vice*)
McCutchen, Doyle, Brown & Enersen, LLP
Three Embarcadero Center
San Francisco, CA 94111
(415) 363-2672

Mary T. Huser (admitted *pro hac vice*)
S. Christian Platt (admitted *pro hac vice*)
McCutchen, Doyle, Brown & Enersen, LLP
1900 University Avenue
East Palo Alto, CA 94303-2223
(650) 849-4400
Attorneys for Defendant and Counterclaimant
ICU MEDICAL, INC.

-3-

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the THIRD SUPPLEMENTAL RESPONSES OF DEFENDANT ICU MEDICAL, INC. TO PLAINTIFF MEDEX, INC.'S FIRST SET OF INTERROGATORIES (NO. 5) was served by Facsimile and First Class Mail, postage prepaid on counsel for Plaintiff, Medex, Inc. at the following address:

Kurt L. Grossman, Esq.
Gregory F. Ahrens, Esq.
WOOD, HERRON & EVANS, L.L.P.
2700 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202-2917

On the 4th day of December, 2001.

By: Mary Haser / 44
Mary T. Haser

-4-

JAN 17 2002 07 07

ICU v Alaris, CA 04-0689 AHS(VBKx)

EXHIBIT 5
Page 4 of 4

EXHIBIT 6

EXHIBIT 6

**RESTRICTED DOCUMENT
PURSUANT TO LR 79-5.1**

**FILED UNDER SEAL PURSUANT TO
PROTECTIVE ORDER ENTERED ON FEBRUARY 9, 2005**

EXHIBIT 7



Paul, Hastings, Janofsky & Walker LLP
3579 Valley Centre Drive • San Diego, CA 92130
telephone 858 720 2500 • facsimile 858 720 2555 • www.paulhastings.com

Atlanta
Beijing
Brussels
Hong Kong
London
Los Angeles
Milan
New York
Orange County
Palo Alto
Paris
San Diego
San Francisco
Shanghai
Stamford
Tokyo
Washington, DC

(858) 720-2524
christianplatt@paulhastings.com

July 6, 2005

38781.00003

Via Facsimile

David D. Hendrick, Esq.
McAndrews, Held & Malloy, Ltd.
500 West Madison, 34th Floor
Chicago, IL 60661

Re: ICU Medical Inc. v. Alaris Medical Systems, Inc.

Dear Dave:

We write to follow-up on our meet and confer yesterday regarding your letters of June 20 and June 21, 2005 regarding ICU's alleged deficiencies in document production.

ICU has met and conferred with Alaris twice (and for nearly four hours) regarding the alleged deficiencies set forth in Alaris' letters of June 20 and June 21, 2005. Despite ICU's repeated, good faith efforts to assure Alaris that responsive documents will be timely produced and that it is not withholding such documents, Alaris continues to want more. Now, Alaris wants to meet and confer yet again, this time to "hammer out" a formal agreement regarding ICU's production. But this exercise is neither productive nor required under the Federal Rules, especially given ICU's statements about what it is willing to produce. Instead, ICU has set forth below precisely the scope of its production as it relates to Alaris' alleged deficiencies, including the timing.

Based on our recent meet and confer sessions, we believe the representations below adequately address Alaris' concerns as you have identified them over the past week and in correspondence. If after reviewing this letter Alaris still has questions or concerns, please specifically identify them so that we may address them in an efficient manner during our next call. Of course we realize that our next scheduled call is for noon (2pm Central) today and that Alaris will not have had much time to review and consider this letter. Because of that, ICU proposes that the parties postpone this call and take up any remaining issues during our scheduled call tomorrow at 9:30 am (11:30 am Central), provided Alaris identifies any issues by close of business today. Please be advised that this letter is not intended to delay production (as you can see, we have set the three weeks period for production from today's date, not tomorrow), but rather to assist the parties in timely and efficiently addressing Alaris' production concerns.

Paul Hastings
ATTORNEYS

David D. Headrick, Esq.
July 6, 2005
Page 2

Timing

As we explained yesterday, although we are not required to set a specific date and time for production, ICU will use its best efforts to produce documents by July 26, 2005. To the extent ICU requires additional time to produce such documents, we will notify Alaris immediately. We expect Alaris to be reasonable in allowing for additional time.

Objections

Unless otherwise explained below, ICU does not expect to withhold responsive, non-privileged document from the categories identified in your June 20th and 21st letters on the basis of any objections asserted in its Responses to Alaris' First and Second Requests for Production and First Set of Interrogatories. However, to the extent a dispute later arises that certain documents not previously identified by Alaris are somehow responsive to any of the categories identified in your letters, ICU reserves its right to rely on its objections.

Alleged Deficiency No. 1: Component and Assembly Drawings for the CLAVE.

ICU has conducted a reasonable search for the latest revisions of the component and assembly drawings for the CLAVE C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE). As we've discussed previously, ICU does not know which drawings correspond to the prototype CLAVE device, but our search has been broad enough to include drawings and we have no intention of withholding them, if they exist. As we've agreed, ICU will make the CLAVE prototype available for inspection as set forth in previous correspondence. Subject to our objections, ICU has already produced or will be producing the latest revisions of the component and assembly drawings for the Clave C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE) located after a reasonable search. As we've discussed, ICU expects to produce this information within the next three weeks.

Alleged Deficiency No. 2: Directions for Use ("DFU's") and Assembly Drawings for Products that Incorporate the CLAVE.

This issue has been addressed in previous correspondence

Paul Hastings
ATTORNEYS

David D. Headrick, Esq.
July 6, 2005
Page 3

Alleged Deficiency No. 3: Samples of the CLAVE C1000, CLAVE A, CLAVE B, Low Profile Version of the CLAVE, and the CLAVE Prototype, Including Components.

This issue has been addressed in previous correspondence. We expect to produce samples within the next three weeks. Please let us know when Alaris expects to produce its samples.

Deficiency No. 4: CLAVE Design History Files (or equivalent documents ICU is required to keep by federal regulation).

ICU has conducted a reasonable search for ICU's Device Master Record for the Clave C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE). As we've discussed previously, ICU does not know which Device Master Record, if any, corresponds to the prototype CLAVE device, but our search has been broad enough to include such documents and we have no intention of withholding them, if they exist. Subject to our objections, ICU has already produced or will be producing ICU's Device Master Record for the Clave C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE) located after a reasonable search. As we've discussed, ICU expects to produce this information within the next three weeks.

Alleged Deficiency No. 5: Documents Related to the Compatibility of the CLAVE with Commercially Available Male Luers.

ICU has conducted a reasonable search for documents related to male luer compatibility for the Clave C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE). As we've discussed previously, ICU does not know which documents, if any, corresponds to the prototype CLAVE device, but our search has been broad enough to include such documents and we have no intention of withholding them, if they exist. Subject to our objections, ICU has already produced or will be producing documents related to male luer compatibility (including the latest version of SE20-00284, or its equivalent) for the Clave C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE) located after a reasonable search. As we've discussed, ICU expects to produce this information within the next three weeks.

Paul Hastings
ATTORNEYS

David D. Headrick, Esq.
July 6, 2005
Page 4

Alleged Deficiency No. 6: CLAVE Marketing Documents.

ICU has conducted a reasonable search for documents that would include marketing documents, launch plans, marketing plans, market analysis and share information, strategic planning, business plans, brochures, pamphlets, and internal sales publications for the Clave C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE), including "Clave-Brochure-Component Breakdown" (M1-1009); "Clave-Brochure-One Piece, One trip, One Change" (M1-1014); "Clave Brochure Slick" (M1-1023); and "Needles [sic] IV Therapy / Comparing 3 Systems for Safety – Kathy Prince Article" (M1-1034). As we've discussed previously, ICU does not know which documents, if any, correspond to the prototype CLAVE device, but our search has been broad enough to include such documents and we have no intention of withholding them, if they exist. Subject to our objections, ICU has already produced or will be producing documents that would include marketing documents, launch plans, marketing plans, market analysis and share information, strategic planning, business plans, brochures, pamphlets, and internal sales publications for the Clave C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE) located after a reasonable search. As we've discussed, ICU expects to produce this information within the next three weeks.

Alleged Deficiency No. 7: Un-redacted and Complete Copies of Correspondence with the FDA related to the CLAVE.

We've addressed the alleged deficiencies in previous correspondence and corrected the record with respect to various issues raised in your letter. As we've told you, ICU has conducted a reasonable search for un-redacted and complete copies of correspondence with the FDA related to the Clave C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE). As we've discussed previously, ICU does not know which documents, if any, corresponds to the prototype CLAVE device, but our search has been broad enough to include such documents and we have no intention of withholding them, if they exist. Subject to our objections, ICU has already produced or will be producing un-redacted and complete copies of correspondence with the FDA related to the Clave C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE) located after a reasonable search. As we've discussed, ICU expects to produce this information within the next three weeks.

Alleged Deficiency No. 8: 1993 Presentation Package for the CLAVE and "The Clave Needleless I.V. Connector From ICU Medical, Inc."

This issue has been addressed in previous correspondence.

Paul Hastings
ATTORNEYS

David D. Headrick, Esq.
July 6, 2005
Page 5

Alleged Deficiency No. 9: Notes and Minutes from Teams or Groups Involved with the Design, Development, or Improvement of the CLAVE.

ICU has conducted a reasonable search for team meeting minutes and notes related to the Clave C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE). As we've discussed previously, ICU does not know which documents, if any, corresponds to the prototype CLAVE device, but our search has been broad enough to include such documents and we have no intention of withholding them, if they exist. Subject to our objections, ICU has already produced or will be producing team meeting minutes and notes for the Clave C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE) located after a reasonable search. As we've discussed, ICU expects to produce this information within the next three weeks.

Alleged Deficiency No. 10: Documents Related to the Configuration and Number of Flow Windows or Channels Used in the CLAVE.

ICU has conducted a reasonable search for documents related to the design, development, structure and operation (and to the extent they exist, documents related to the configuration and number of flow windows or channels) for the Clave C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE). As we've discussed previously, ICU does not know which documents, if any, corresponds to the prototype CLAVE device, but our search has been broad enough to include such documents and we have no intention of withholding them, if they exist. Subject to our objections, ICU has already produced or will be producing documents related to the design, development, structure and operation (and to the extent they exist, documents related to the configuration and number of flow windows or channels) for the Clave C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE) located after a reasonable search. As we've discussed, ICU expects to produce this information within the next three weeks.

Alleged Deficiency No. 11: Storyboards, Scripts, Drafts, Final Animation, and Other Related Documents of "How the CLAVE Connector Works."

ICU has conducted a reasonable search for drafts and final animations of "How the Clave Connector Works," as shown on ICU's website at <http://www.jcumed.com/Clave.asp>. Subject to our objections, ICU has already produced or will be producing drafts and final animations of "How the Clave Connector Works," as shown on ICU's website at

Paul Hastings
ATTORNEYS

David D. Headrick, Esq.
July 6, 2005
Page 6

<http://www.icumed.com/Clave.asp>, located after a reasonable search. As we've discussed, ICU expects to produce this information within the next three weeks.

Alleged Deficiency No. 12: Audio-Visual Materials Related to the Operation, Function, or Structure of the CLAVE.

ICU has conducted a reasonable search for audio-visual materials related to the operation, function, or structure of the CLAVE and products that incorporate the CLAVE, including training and sales videos, animations and DVDs. Subject to our objections, ICU has already produced or will be producing audio-visual materials related to the operation, function, or structure of the CLAVE and products that incorporate the CLAVE, including training and sales videos, animations and DVDs located after a reasonable search. As we've discussed, ICU expects to produce this information within the next three weeks.

Alleged Deficiency No. 13: Agreements with any Third Party, including Hospira, Abbott, B. Braun, or McGaw regarding the Distribution or Resale of the CLAVE.

ICU has conducted a reasonable search for agreements with third parties, including Hospira, Abbott, B. Braun, or McGaw, relating to the distribution or resale of the CLAVE C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE). Subject to our objections, ICU has already produced or will be producing agreements with third parties, including Hospira, Abbott, B. Braun, or McGaw, relating to the distribution or resale of the CLAVE C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE) located after a reasonable search. As we've discussed, ICU expects to produce this information within the next three weeks.

Alleged Deficiency No. 14: Licenses of the Subject and Counterpart Patents.

As we discussed previously, ICU does not grant licenses to the CLAVE family of patents (*i.e.*, ICU continuation or continuation-in-part patents claiming priority to U.S. patent application Ser. No. 07/813,073, filed Dec. 18, 1991), so there are no licenses to produce.

Alleged Deficiency No. 15: Lab Notebooks from Dr. George Lopez Related to the CLAVE or the Subject and Counterpart Patents.

As we have addressed previously, ICU has produced documents from Dr. George Lopez related to the conception, design, development, and reduction to practice of CLAVE products or the patents-in-suit as required under the Adopted Patent Local Rules. ICU has conducted a reasonable search for other documents relating to design, development

Paul Hastings
ATTORNEYS

David D. Headrick, Esq.
July 6, 2005
Page 7

and reduction to practice of the CLAVE. Subject to our objections, ICU has already produced or will be producing documents relating to design, development and reduction to practice of the CLAVE located after a reasonable search. As we've discussed, ICU expects to produce this information within the next three weeks.

Alleged Deficiency No. 16: Documents Related to the Structure, Operation, Testing, or Investigation of the SmartSite® and SmartSite Plus® Valves.

ICU has conducted a reasonable search for studies, competitive testing, investigations and documents describing the operation and/or function of the SmartSite or SmartSite Plus valves. Subject to our objections, ICU has already produced or will be producing studies, competitive testing, investigations and documents describing the operation and/or function of the SmartSite or SmartSite Plus valves located after a reasonable search. As we've discussed, ICU expects to produce this information within the next three weeks.

Alleged Deficiency No. 17 and 18: Documents from ICU v. B. Braun and Medex v. ICU.

As we discussed previously, ICU has begun the process of contacting counsel for Braun and Medex regarding the requested information.

Alleged Deficiency No. 19: All Lab Notebooks Relating to the Conception and/or Reduction to Practice of the Patents in Suit.

As we have addressed previously, ICU has produced documents related to the conception, design, development, and reduction to practice of CLAVE products or the patents-in-suit as required under the Adopted Patent Local Rules, including lab notebooks. ICU has conducted a reasonable search for other lab notebooks (with cover pages and table of contents) relating to the reduction to practice of the asserted claims of the patents in suit. Subject to our objections, ICU has already produced or will be producing relevant portions of lab notebooks (with cover pages and table of contents) relating to the reduction to practice of the asserted claims of the patents in suit located after a reasonable search. As we've discussed, ICU expects to produce this information within the next three weeks.

With respect to Item # 2 in your letter, we agreed to look at the Bates ranges provided in your letter. We expect to respond to your concerns by the end of the week.

Paul Hastings
Attorneys

David D. Headrick, Esq.
July 6, 2005
Page 8

Alleged Deficiency No. 20: ICU's Opinions of Counsel regarding the CLAVE and Medex's U.S. Patent No. RE35,841.

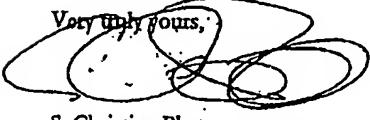
In your letter, Alaris generally requests ICU's opinions of counsel regarding Medex's U.S. Patent No. RE35,841. These documents are protected by the attorney-client privilege and/or the work product doctrine, or another lawfully recognized privilege or immunity. They are also not relevant to this case. We do not believe the limited waiver in the Medex litigation extends to Alaris – and you have been unable to provide us with any authority to that effect. Further, the relevancy of such information is far outweighed by the confidential and privileged nature of the communication.

Alleged Deficiency No. 21: Specific Dates of Conception, Reduction to Practice, and Priority for the Asserted Claims of the Patents in Suit.

In your letter, Alaris generally requests that ICU provide specific dates for conception, reduction to practice, and priority for all of the asserted claims of the patents in suit.

As we discussed, ICU has conducted a reasonable search and has already provided Alaris with priority and conception dates in response to Alaris' Interrogatories and in ICU's Initial Disclosure of Asserted Claims and Preliminary Infringement Contentions. In addition, Interrogatory No. 1 is a contention interrogatory – and the parties agreed to delay responding to such contention interrogatories. ICU is still in the process of investigating the information sought in this interrogatory and will supplement its contention interrogatories, pursuant to the parties' agreement, at an appropriate time.

As previously stated, please let us know by the close of business today if Alaris still has any concerns regarding the above, and please identify those concerns specifically so that the parties can meaningfully address them in our call tomorrow.

Very truly yours,

S. Christian Platt
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Kim Van Voorhis, Esq.

Paul, Hastings, Janofsky & Walker LLP
3579 Valley Centre Drive, San Diego, CA 92130
telephone 858-720-2500 / facsimile 858-720-2555 / www.paulhastings.com

Paul Hastings

FACSIMILE TRANSMISSION

from: **facsimile:** **telephone:** **Initials:**

S. Christian Platt (858) 720-2555 (858) 720-2524 SCP

client name: ICU Medical, Inc. **client matter number:** 38781.00003

date: July 6, 2005 **pages (with cover):** 9

to:	company/office:	facsimile:	telephone:
David D. Headrick, Esq.	McAndrews Held & Malloy Ltd.	(312) 775-8100	(312) 775-8000
Kimberly Van Voorhis, Esq.	Milbank, Tweed, Hadley & McCloy LLP	(650) 739-7100	(650) 739-7000

comments:

If you do not receive all pages, please call immediately Facsimile Center:

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.

EXHIBIT 8



Paul, Hastings, Janofsky & Walker LLP
3579 Valley Centre Drive • San Diego, CA 92130
telephone 658 720 2500 • facsimile 658 720 2555 • www.paulhastings.com

Atlanta
Beijing
Brussels
Hong Kong
London
Los Angeles
Milan
New York
Orange County
Palo Alto
Paris
San Diego
San Francisco
Shanghai
Stamford
Tokyo
Washington, DC

(858) 720-2524
christianplatt@paulhastings.com

July 11, 2005

38781.00003

VIA FACSIMILE

David D. Headrick, Esq.
McAndrews, Held & Malloy, Ltd.
500 West Madison, 34th Floor
Chicago, IL 60661

Re: ICU Medical, Inc. v. Alaris Medical Systems, Inc.

Dear Dave:

I write in response to your letter of July 7, 2005. ICU disputes your recitation of events with respect to the meet and confer process. Both Kim Van Voorhis and I were on the call for most of the time and our recollection of events differs markedly from the one set forth in your letter. Rather than spending unnecessary time addressing these discrepancies, however, ICU elects to focus on resolving actual controversies in an attempt to streamline the discovery process.

Our letter of July 6, 2005 summarizes the parties' previous meet and confer efforts. On July 7, 2005, the parties met and conferred again for over a half-hour to discuss ICU's suggestion that Alaris consider ICU's position and determine if there are additional areas in dispute. As we informed you during the call, we were willing to listen to any concerns you may have (either by letter or telephone) after Alaris had a chance to consider our letter. It appears that ICU's suggestion was the correct approach: nearly half of the issues raised in your June 20th and 21st letters are no longer in dispute — and the vast majority of the remaining issues are fairly minor disputes that are easily addressed, as discussed in more detail below.

We must point out though that Alaris' accusations of "purposefully vague" letters is incorrect. Alaris was premature in raising these issues in the first place — ICU was and is still preparing and producing documents in this case. Unlike the characterizations in your letter, ICU has not been delaying its production. Months after the parties entered into a highly detailed electronic production agreement — an agreement insisted on by Alaris — Alaris changed the rules, requesting that ICU provide a second level of unitization data. As we've discussed and Alaris acknowledged, going back and fixing the previous data to comport with Alaris' new formatting requirements has been time consuming and

Paul Hastings
ATTORNEYS

David D. Headrick, Esq.
July 11, 2005
Page 2

expensive. Nonetheless, ICU has been diligent in attempting to resolve the issues raised in your lengthy meet and confer letters.

Before turning to the individual responses, we must point out that ICU has not given Alaris an unconditional guarantee to "produce documents sufficient to remedy all of the deficiencies raised by ALARIS on or before July 26, 2005" as claimed in your letter. ICU has agreed to use its best efforts to produce documents as outlined in our letters of July 1, 2005 and July 6, 2005 and as further explained in this letter. Once Alaris has had a chance to review ICU's document production, please contact us if you have any additional concerns. We believe the parties should be able to informally resolve any outstanding issues at that time without seeking Court intervention.

Alleged Deficiency No. 2:

Our position remains unchanged from our July 1, 2005 letter. ICU cannot immediately produce these documents because ICU is still investigating which of its products would be substitutes for Alaris' infringing products. Alaris only recently produced documents relating to its infringing products. In addition, ICU – unlike Alaris – produces custom IV sets. Each custom IV set is a new product in ICU's database. Thus, ICU has approximately 3000 different products that include a CLAVE connector. It would be unduly burdensome and expensive for ICU to produce assembly drawings for each of the approximately 3000 different products especially when not all of those products may ultimately be at issue. In addition, these documents are of marginal, if any, relevance to this litigation. Nonetheless, ICU has agreed to produce such documents after ICU determines which products it alleges are substitutes for Alaris' products. This information will be determined in conjunction with responding to Alaris' contention interrogatories. As you know, at Alaris' request, the parties agreed to hold off on responding to such contention interrogatories.

Alleged Deficiency No. 3:

We do not see a dispute here. We look forward to exchanging physical samples. We suggest the parties exchange such samples on July 26, 2005.

Alleged Deficiency No. 6:

We do not understand Alaris' confusion. ICU agreed to produce documents relating to the "Clave C1000 (ICU's commercial product) and previous or alternative versions of that product[,] which, by definition, would include the first commercially available CLAVE. If Alaris still has some concern, please let us know.

SPN111315.7

EXHIBIT 8
Page 2 of 6

Paul Hastings
ATTORNEYS

David D. Headrick, Esq.

July 14, 2005

Page 3

Alleged Deficiency No. 7:

We are investigating your concerns. However, as we informed you in our July 6, 2005 letter, subject to our objections, ICU has already produced or will be producing unredacted and complete copies of correspondence with the FDA related to the Clave C1000 (ICU's commercial product) and previous or alternative versions of that product (including the CLAVE A, CLAVE B and Low Profile CLAVE) located after a reasonable search.

Alleged Deficiency No. 8:

We are investigating your concerns and performing a reasonable search for a better copy of the Presentation Package beginning at ICU-A004606. To the extent we locate an additional or better copy of that Presentation Package, we expect to produce it by July 26, 2005.

Alleged Deficiency Nos. 17 and 18:

We have sent letters to Braun and Medex. We do not have sufficient information at this time to give you a date certain on when the documents requested may be produced.

Alleged Deficiency No. 19:

For the most part, Alaris appears to have simply located handwritten notes in ICU's production and demanded that ICU go through and identify whether or not these are from lab notebooks and if so, whether or not they include cover pages or table of contents. While ICU does not believe it is obligated to provide this information, this letter summarizes the status of each of the ranges identified in your June 22, 2005 letter.

ICU-A001812-20: The documents referenced are handwritten notes. We are unaware of a table of contents for these notes. There is a cover page and spine, which is attached hereto. If you believe that the production of this document is necessary, please let us know and we can assign it a Bates number.

ICU-A002833-47: The first page of this document (ICU-A002832), which you do not reference in your letter, is the spine of a notebook with a date range. We are unaware of any table of contents for these notes.

ICU-A016102-03 and ICU-A016190-92: These pages appear to be excerpts from a lab notebook maintained as part of another document or file. Responsive, unobjectionable portions of this lab notebook (including cover pages and the table of contents) either have been or will be produced as part of ICU's document production.

SAN/1117315.1

EXHIBIT 8
Page 3 of 6

Paul Hastings
Attorneys

David D. Headrick, Esq.

July 11, 2005

Page 4

ICU-A013675-80, ICU-A013710-13, ICU-A013817-21, ICU-A013794-806, ICU-A013808-09, ICU-A013872-99, ICU-A013951-54: The documents referenced are handwritten notes. We are unaware of a table of contents or cover pages for these notes.

ICU-A014559-70: The first page of this document (ICU-A0014558), which you do not reference in your letter, includes a page with a title. The referenced pages appear to be excerpts from a lab notebook. Responsive, unobjectionable portions of this lab notebook (including cover pages and the table of contents) either have been or will be produced as part of ICU's document production.

ICU-A014707-10: The documents referenced are handwritten notes. We are unaware of a table of contents or cover page for these notes.

ICU-A014717-20: The documents referenced are handwritten notes that were part of a facsimile. Again, you do not reference the first page of this document, ICU-A014716, which is the facsimile transmittal cover sheet. We are unaware of a table of contents or cover page for these notes.

ICU-A028583 and ICU-A028589-620: These pages appear to be excerpts from a lab notebook maintained as part of another document or file. Responsive, unobjectionable portions of this lab notebook (including cover pages and the table of contents) either have been or will be produced as part of ICU's document production.

Alleged Deficiency No. 20:

As we've previously discussed, the requested documents are protected by the attorney-client privilege and/or the work product doctrine, or another lawfully recognized privilege or immunity. They are also not relevant to this case. We do not believe the limited waiver in the Medex litigation extends to Alaris - and you have been unable to provide us with any authority to that effect. Further, the relevancy of such information is far outweighed by the confidential and privileged nature of the communications.

Alleged Deficiency No. 21:

As we have explained numerous times, ICU continues to investigate the dates requested in this contention interrogatory. As you know, the parties agreed - at Alaris' request - to delay responding to contention interrogatories such as Interrogatory No. 1. As a part of that agreement, ICU produced and identified to Alaris its conception and reduction to practice documents as required by the Adopted Patent Local Rules. Nonetheless, we're agreeable to discussing a schedule with Alaris for the parties to exchange contention interrogatory responses.

SAY/117351

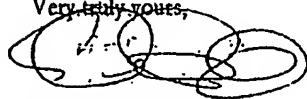
EXHIBIT 8
Page 4 of 6

Paul Hastings
Attorneys

David D. Headrick, Esq.
July 11, 2005
Page 5

We look forward to discussing any outstanding issues with you.

Very truly yours,



S. Christian Platt
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

SCP:lg

SDW/1173151

EXHIBIT 8
Page 5 of 6

Paul, Hastings, Janofsky & Walker LLP
3579 Valley Centre Drive, San Diego, CA 92130
telephone 858-720-2500 / facsimile 858-720-2555 / www.paulhastings.com

PaulHastings

FACSIMILE TRANSMISSION

from:	facsimile:	telephone:	Initials:
S. Christian Platt	(858) 720-2555	(858) 720-2524	SCP
client name:	ICU Medical, Inc.	client matter number:	38781.00003
date:	July 11, 2005	pages (with cover):	6
to:	company/office:	facsimile:	telephone:
David Headrick, Esq.	McAndrews, Held & Malloy, Ltd.	(312) 775-8100	(312) 775-8000

comments:

Re: *ICU Medical, Inc. v. Alaris Medical Systems, Inc.*,
Case No. SA CV 04-0689 AHS (V рркx)

If you do not receive all pages, please call immediately Facsimile Center:

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.

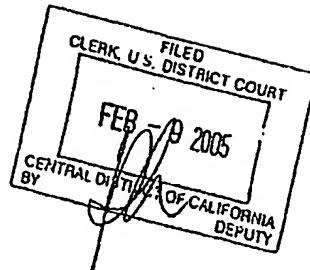
EXHIBIT 9

ORIGINAL

SCANNED

1 DONALD L. MORROW (SBN 66922)
2 PAUL, HASTINGS, JANOFSKY & WALKER LLP
3 695 Town Center Drive, Seventeenth Floor
Costa Mesa, CA 92626
Telephone: (714) 668-6200
Facsimile: (714) 979-1921
(Additional Counsel listed on Signature Page)

5 Attorneys for Plaintiff and Counter-defendant
ICU MEDICAL, INC.



7 MARK P. WINE (SBN 189897)
8 McDERMOTT WILL & EMORY LLP
18191 Von Karman Avenue, Suite 400
9 Irvine, CA 92612
Telephone: (949) 851-0633
Facsimile: (949) 851-9348
(Additional Counsel listed on Signature Page)

11 Attorneys for Defendant and Counter-plaintiff
12 ALARIS MEDICAL SYSTEMS, INC.

Priority _____
Send _____
Enter _____
Closed _____
JS-5/JS-6 _____
JS-2/JS-3 _____
Scan Only _____

RECEIVED
FEB 19 2005
AM 11:11
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

16 ICU MEDICAL, INC., a Delaware
corporation,

17 Plaintiff,

18 v.

19 ALARIS MEDICAL SYSTEMS, INC.,
20 a Delaware corporation,

21 Defendant.

22 ALARIS MEDICAL SYSTEMS, INC.,
23 a Delaware corporation,

24 Counter-Plaintiff,

25 v.

26 ICU MEDICAL, INC., a Delaware
corporation,

27 Counter-Defendant.

04
CASE NO. SA CV 040689 AHS (VBKx)

PROPOSED] STIPULATED
PROTECTIVE ORDER

Discovery Cutoff Date: November 4, 2005

Pretrial Conference Date: April 24, 2006

Trial Date: May 23, 2006

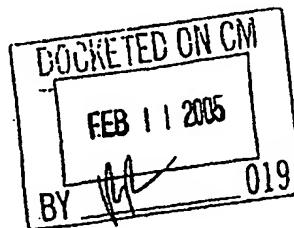


EXHIBIT 9
Page 1 of 15

STIPULATED PROTECTIVE ORDER

WHEREAS, the parties believe that certain information that may be divulged in this litigation may contain trade secrets or other confidential research, development, or commercial information as contemplated by Rule 26(c) of the Federal Rules of Civil Procedure; and

WHEREAS, the parties believe that it would serve the interests of the parties to conduct discovery under a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.

ORDER

In accordance with the stipulation of the parties, and good cause appearing therefore, the Court enters the following protective order:

2 1. Provided that it meets the requirements of Paragraphs 2 and/or 3 below,
3 any information or material produced, formally or informally, in response to a
4 discovery request, including, without limitation, all depositions, documents,
5 information or things produced in response to requests for production of documents,
6 response to a subpoena, answers to interrogatories, responses to requests for
7 admissions, all other discovery taken pursuant to the Federal Rules of Civil Procedure,
8 and any information or material produced pursuant to any disclosure obligations
9 imposed by the Federal Rules of Civil Procedure or the Court's local rules, any
10 information or material disclosed or produced on an informal basis, and any material
11 filed with the Court may be designated under this Protective Order by the person or
12 entity producing, filing or disclosing it or providing the information or material
13 ("Designating Entity") to the person or entity receiving the information or material
14 ("Receiving Entity"). Any party or non-party may designate material under this
15 Protective Order.

26 2. The term "Confidential" shall mean confidential marketing, research,
27 development, financial, or commercial information. To use the term "Confidential" in
28 connection with discovery, the Designating Entity in good faith must determine that

the information or documents to be so designated fall within this definition.

a) All Confidential information not reduced to documentary, tangible or physical form or which cannot be conveniently designated may be designated by the Designating Entity by informing the Receiving Entity in writing;

b) The designation of information as Confidential, pursuant to this Order, shall not be construed as a concession by a Designating Entity that such information is relevant or material to any issue or is otherwise discoverable, or by a Receiving Entity that such information is, in fact, a trade secret or confidential research, development, or commercial information.

3. The term "Attorneys' Eyes Only" shall mean information that qualifies as Confidential under paragraph 2 of this Order and that constitutes proprietary financial or technical information, trade secrets, strategic plans, business plans, information that relates to products that have not been commercially released, or other commercially sensitive competitive information, the disclosure of which may cause harm to the competitive position of the Designating Entity.

4. Any information, document, or thing designated as containing Confidential information shall be used solely for the purposes of this litigation in conformance with the terms of this Order and shall not be disclosed by the Receiving Entity to any person other than: (a) outside counsel for the Receiving Entity; (b) independent experts or consultants retained by a plaintiff or a defendant in this action (directly or by their counsel of record) solely for the purpose of assisting in this litigation; (c) any witness or prospective witness when (i) it is indicated on the face of such information, document, or thing that such person is the author, recipient, or intended recipient of such information, document, or thing, (ii) the person has already received the information, document, or thing or (iii) the person had access to the particular document or thing in their ordinary course of business; (d) paralegals and clerical staff of such outside counsel and of independent experts and consultants as set forth hereinabove; (e) qualified reporters taking testimony, and necessary stenographic

1 and clerical personnel thereof; (f) outside commercial copying and document imaging
2 services; (g) the Court, its clerks and secretaries, and any court reporter retained to
3 record proceedings before the Court; (h) up to three employees, which may include up
4 to three in-house attorneys, regularly employed by a party (or its parent company),
5 designated in writing to the other party, and who agree to be bound by the terms of this
6 Protective Order by signing Exhibit A, and (i) necessary clerical staff for each of such
7 designated employees of the parties as set forth hereinabove. Nothing herein shall
8 prevent a Designating Entity from using or disclosing its own Confidential information
9 in any manner that Designating Entity sees fit.

10 5. The term "outside counsel" shall mean: (a) for Plaintiff ICU Medical,
11 Inc.: Paul, Hastings, Janofsky & Walker LLP; (b) for Defendant ALARIS Medical
12 Systems, Inc.: McAndrews, Held & Malloy, Ltd. and McDermott Will & Emery LLP;
13 and (c) additional outside counsel, to whom no reasonable objection is presented, and
14 who may be designated from time to time by the parties as additional firms entitled to
15 receive Confidential or Attorneys' Eyes Only information pursuant to this Protective
16 Order. A Receiving Entity must give the Designating Entity at least ten (10) business
17 days written notice in advance of disclosing any Confidential or Attorneys' Eyes Only
18 information to such additional outside counsel.

19 6. Information designated as Attorneys' Eyes Only shall only be disclosed
20 by the Receiving Entity to the persons identified in paragraph 4(a) to (g). Nothing
21 herein shall (1) prevent a Designating Entity from using or disclosing its own
22 Attorneys' Eyes Only information in any manner that Designating Entity sees fit, or
23 (2) prevent a Receiving Entity from disclosing Attorneys' Eyes Only information to an
24 expert that has been retained for purposes of this litigation, where that party has
25 complied with the provisions of paragraph 21 with respect to the designated expert.

26 7. (a) Any recipient of information designated as Confidential information
27 or Attorneys' Eyes Only information is subject to this Protective Order. Any recipient
28 of information designated as Confidential information or Attorneys' Eyes Only who

1 receives such information pursuant to paragraph 4(b) or 4(f), must be qualified to have
2 access to Confidential information or Attorneys' Eyes Only information through the
3 procedures of 7(b), below. Any recipient of information designated as Confidential
4 information who receives such information pursuant to paragraph 4(h) must be
5 qualified to have access to Confidential information through the procedures of 7(b),
6 below.

7 (b) Before being supplied with information designated as Confidential
8 information or Attorneys' Eyes Only, recipients must be shown a copy of this Order
9 and must sign a copy of the undertaking that is attached as "Exhibit A." Such written
10 agreement shall be retained by counsel for the Receiving Entity. The persons
11 receiving Confidential or Attorneys' Eyes Only information are enjoined from
12 disclosing it to any other person, except in conformance with this Order.

13 8. Each individual who receives any Confidential or Attorneys' Eyes Only
14 information hereby agrees to subject himself/herself to the jurisdiction of this Court for
15 the purpose of any proceedings relating to the performance under, compliance with or
16 violation of this Protective Order.

17 9. Information designated as Confidential information or Attorneys' Eyes
18 Only information disclosed in connection with this litigation shall be used by the
19 Receiving Entity only in connection with this litigation and shall not be used by the
20 Receiving Entity for any business or financial purpose.

21 10. Information designated as Confidential information or Attorneys' Eyes
22 Only information shall not include any document, information or other materials
23 which:

- 24 (a) at the time of disclosure to Receiving Entity is in the public domain;
25 (b) after disclosure to a Receiving Entity becomes part of the public domain
26 as a result of publication not involving a violation of this Order;
27 (c) a Receiving Entity can show was received by it, whether before or after
28 the disclosure, from a source who obtained the information lawfully and under no

1 obligation of confidentiality to the Designating Entity; or

2 (d) a Receiving Entity can show was independently developed by it, before
3 the time of disclosure, or after the time of disclosure by personnel who have not had
4 access to the Designating Entity's Confidential or Attorneys' Eyes Only information.

5 11. If information designated as Confidential information or Attorneys' Eyes Only
6 information is disclosed to anyone other than in a manner authorized by this
7 Order, the party responsible for such disclosure must immediately bring all pertinent
8 facts relating to such disclosure to the attention of the Designating Entity and make
9 every effort to prevent further disclosure.

10 12. Any person in possession of information designated as Confidential
11 information or Attorneys' Eyes Only information shall exercise reasonable and
12 appropriate care with regard to the storage, custody or use of Confidential information
13 or Attorneys' Eyes Only information in order to ensure that the confidential nature of
14 the same is maintained.

15 13. Any party filing Confidential information or Attorneys' Eyes Only
16 information with the Clerk of the Court shall do so in conformance with Local Rule
17 79-5.1. Should the filing party fail to make an appropriate designation to the Clerk,
18 any party (including the Designating Entity) may take appropriate steps to make the
19 appropriate designation to the Clerk.

20 14. Any entity producing documents under this Protective Order shall
21 designate documents containing Confidential information or Attorneys' Eyes Only
22 information by placing a legend on each page of any document that the Designating
23 Entity wishes to protect against disclosure or use. The legend shall state
24 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" as
25 appropriate. The legends "OUTSIDE LITIGATION COUNSEL EYES ONLY" and
26 "OUTSIDE COUNSEL EYES ONLY" shall have the same meaning and effect as the
27 legend "CONFIDENTIAL - ATTORNEYS' EYES ONLY." A designation on a
28 document shall not implicitly apply to any exhibits and/or attachments to the

1 document. A designation of Confidential information or Attorneys' Eyes Only
2 information as to any thing of which inspection or sample has been requested shall be
3 made by placing a legend on the thing or container within which it is stored, or by
4 some other means of designation agreed to by the parties. All documents and things
5 shall be marked before provision of a physical copy to the other party. Alternatively,
6 documents may be made available for an initial inspection by counsel for the
7 requesting (receiving) party before the designation of Confidential or Attorneys' Eyes
8 Only information. In such cases, the inspected documents shall be treated as being
9 designated Attorneys' Eyes Only according to the terms of this Order, before providing
10 copies to the Receiving Entity. Such initial inspection shall not constitute waiver of
11 confidentiality with respect to any document so inspected. Copies provided after the
12 inspection shall be marked as set forth in this Paragraph.

SCANNED

13 15. Information disclosed at a deposition may be designated as Confidential
14 information or Attorneys' Eyes Only information by either indicating on the record at
15 the deposition that the testimony is Confidential or Attorneys' Eyes Only or by
16 notifying the opposing party and the court reporter in writing within thirty (30)
17 business days of the receipt of the transcript of those pages and lines that are
18 confidential. Such written notification shall then be attached by the Receiving Entity
19 and/or court reporter to the transcript and each copy thereof in its possession, custody,
20 or control. All transcripts of such testimony shall be treated as Attorneys' Eyes Only
21 in their entirety until thirty (30) days following receipt of the transcript or receipt of the
22 confidentiality designations if received earlier.

23 16. Subject to paragraph 27 of this Order, this Order is not intended to deal
24 with any discovery objections on the grounds of attorney-client privilege, work
25 product immunity, the common interest privilege, or other privilege protection
26 afforded by law or to preclude any entity from seeking relief either from a provision of
27 this Order or any other relief from this Court which may be appropriate under the
28 Federal Rules of Civil Procedure or this Court's local rules.

1 17. Nothing herein shall prevent disclosure if the Designating Entity that
2 designated information as Confidential information or Attorneys' Eyes Only
3 information consents in writing to such disclosure. Nor shall anything herein prevent
4 any counsel of the parties from utilizing Confidential information or Attorneys' Eyes Only
5 information in the deposition of any person who is reasonably alleged to be the author,
6 source or recipient of the Confidential information or Attorneys' Eyes Only
7 information, irrespective of the Designating Entity that produced such information.

8 18. Nothing in this Order shall bar or otherwise restrict any attorney from
9 rendering advice to his/her client with respect to this litigation and, in the course
10 thereof, referring to or relying generally upon his examination of documents or
11 information designated as Confidential information or Attorneys' Eyes Only
12 information provided, however, that in rendering such advice and in otherwise
13 communicating with his clients, the attorney shall not disclose the content or the
14 source of such information or documents contrary to the terms of this Order.

15 19. If a Designating Entity, through inadvertence, produces any information
16 designated as Confidential or Attorneys' Eyes Only information without labeling or
17 marking or otherwise designating it as such in accordance with the provisions of this
18 Protective Order, the Designating Entity may give written notice to the Receiving
19 Entity that the document or thing produced is deemed Confidential or Attorneys' Eyes
20 Only information and should be treated as such in accordance with the provisions of
21 this Protective Order. The Receiving Entity shall treat such documents and things as
22 Confidential or Attorneys' Eyes Only information from the date such notice is
23 received. Disclosure, prior to the receipt of such notice, of such information
24 designated as Confidential or Attorneys' Eyes Only information to persons not
25 authorized to receive such information shall not be deemed a violation of this
26 Protective Order.

27 20. A Receiving Entity shall not be obligated to challenge the propriety of
28 Confidential or Attorneys' Eyes Only information designation at the time made, and

1 failure to do so shall not preclude a subsequent challenge thereto. In the event that any
2 party to this litigation disagrees at any stage of these proceedings with such
3 designation, such party shall provide to the Designating Entity written notice of its
4 disagreement with the designation. The parties shall first try to dispose of such dispute
5 in good faith on an informal basis. If the dispute cannot be resolved, the party
6 challenging the designation may request appropriate relief from the Court, but in any
7 event, such relief from the Court shall not be requested before ten (10) business days
8 after the Designating Entity is served with the required notice of disagreement. The
9 Designating Entity shall have the burden of establishing the applicability of the
10 confidentiality designation to the particular document or information at issue, except
11 the Receiving Entity shall have the burden of proving that the document or information
12 is subject to one of the exceptions set forth in Paragraph 10.

13 21. A Receiving Entity must give the Designating Entity at least ten (10)
14 business days written notice before disclosing, for the first time, Confidential or
15 Attorneys' Eyes Only information to an independent experts or consultant. At that
16 time, the Receiving Entity shall also provide the name and business address of that
17 expert or consultant, a current c.v. for that expert or consultant, a listing of the
18 employment of that expert or consultant, all consulting and expert relationships either
19 in support of or adverse to any party to this case (or its parents, subsidiaries, or
20 affiliates), and all consulting and expert relationships over the past four years in the
21 field of intravenous therapy products (including needless medical connectors).
22 Should a Designating Entity have an objection to a Receiving Entity's disclosure of
23 Confidential or Attorney's Eyes Only information to the designated expert or
24 consultant, the objecting party shall serve written notice of its objection upon the party
25 who designated the expert within ten (10) business days of designation. If a party so
26 objects, the parties shall confer and attempt to resolve the dispute. In the event the
27 parties are unable to resolve the objection on an informal basis, the Designating Entity
28 may request, and will have the burden to establish entitlement to, appropriate relief.

1 from the Court. In any event, such relief from the Court shall be requested within
2 twenty (20) business days after the Designating Entity is served with the required
3 notice of objection. No disclosure of Confidential or Attorney's Eyes Only
4 information may be made to a consulting or testifying expert or consultant until either
5 (1) the expiration of ten (10) business days after designation of the expert's identity, as
6 set forth above, without objection, or (2) the resolution of a pending motion adverse to
7 the party seeking to prevent disclosure. Each party may retain not more than six (6)
8 independent experts or consultants as set forth in paragraph 4(b) hereinabove. Nothing
9 herein shall prevent the parties from agreeing to the designation of alternate or
10 additional technical advisers if the Receiving Entity reasonably believes it necessary in
11 the preparation for litigation of this matter to make such additional disclosures.

12 22. Confidential or Attorneys' Eyes Only information shall not be copied or
13 otherwise reproduced by a Receiving Entity, except for transmission to qualified
14 recipients, without the written permission of the Designating Entity, or, in the
15 alternative, by further Court Order. Nothing herein shall, however, restrict a qualified
16 recipient from making working copies, abstracts, digests and analyses of Confidential
17 or Attorneys' Eyes Only information for use in connection with this litigation and such
18 working copies, abstracts, digests and analyses shall be deemed Confidential or
19 Attorneys' Eyes Only information under the terms of this Order. Further, nothing
20 herein shall restrict a qualified recipient from converting or translating Confidential or
21 Attorneys' Eyes Only information into machine readable form for incorporation into a
22 data retrieval system used in connection with these actions, provided that access to
23 Confidential or Attorneys' Eyes Only information, in whatever form stored or
24 reproduced, shall be limited to qualified recipients.

25 23. This Order shall be without prejudice to the right of any party to oppose
26 production of any information for lack of timeliness or relevance or any other ground
27 other than the presence of Confidential or Attorneys' Eyes Only information.

28 24. Any of the notice requirements herein may be waived, in whole or in part,

1 but only by a writing signed by the attorney of record for the party against whom such
2 waiver is asserted will be effective.

3 25. In the event a party having possession, custody or control of any
4 Confidential information or Attorneys' Eyes Only information of the other party
5 receives a subpoena, request or other process or order to produce such information in
6 another, unrelated legal proceeding, from a non-party to this action, such party shall
7 immediately (a) notify counsel for the Designating Entity of the subpoena, request or
8 other process or order, (b) furnish counsel for the Designating Entity with a copy of
9 said subpoena, request or other process or order in sufficient time within which the
10 Designating Entity may take the necessary steps to quash or otherwise object to the
11 subpoena or request, and (c) cooperate with respect to all reasonable procedures sought
12 to be pursued by the Designating Entity whose interests may be affected. The
13 Designating Entity asserting the Confidential or Attorneys' Eyes Only designation
14 shall have the burden of defending against such subpoena, request or other process or
15 order. The party receiving the subpoena, request or other process or order shall be
16 entitled to comply with it except to the extent the Designating Entity asserting the
17 Confidential or Attorneys' Eyes Only designation has promptly notified the party
18 receiving the subpoena, request, other process or order of its intent to take immediate
19 legal action to quash the subpoena or respond to the request, in which case the party
20 shall not produce such documents while such legal action is pending or the
21 Designating Entity is successful in obtaining an order modifying or quashing the
22 subpoena, request or other process or order.

23 26. In the event that a party seeks discovery from a non-party to this action,
24 either the non-party or the parties may invoke the terms of this Protective Order with
25 respect to any Confidential or Attorneys' Eyes Only information provided to the
26 parties by the non-party by so advising all parties to this action in writing. Any such
27 non-party shall have standing to appear in this action in order to file motions and
28 oppose motions, as necessary, to protect such non-party's rights in its designated

1 materials.

2 27. An initial inspection of documents (including physical objects) shall not
3 constitute a waiver of the attorney-client privilege, work product immunity, common
4 interest privilege, or any other privilege or protection afforded by law ("Privilege")
5 with respect to any document so inspected. Inadvertently furnishing copies to the
6 Receiving Entity also shall not constitute a waiver of Privilege with respect to any
7 document or physical object so furnished, if within ten (10) business days after
8 learning of an inadvertent production, the Designating Entity designates any such
9 documents as within one or more of the Privileges and requests return of any such
10 documents to the Designating Entity. Upon a reasonable request by the Receiving
11 Entity as to whether a document was inadvertently produced, the Designating Entity
12 shall have ten (10) business days to respond. The Designating Entity's response shall:
13 (1) state whether the document was or was not inadvertently produced, (2) if
14 applicable, designate the document as within one or more of the Privileges, and (3)
15 state whether return of the document is requested. Upon request by the Designating
16 Entity for return of any such documents designated as within one or more of the
17 Privileges, the Receiving Entity shall immediately return to the Designating Entity all
18 originals and copies of such document(s). Nothing herein shall prevent the Receiving
19 Entity from challenging the propriety of the Privilege designation by submitting a
20 written challenge to the Court.

21 28. This Protective Order governs only discovery. At trial, the parties may
22 redesignate or redact confidential information.

23 29. Within 60 days of the conclusion of this action, including any appeals, the
24 originals of all produced documents or produced things designated as containing
25 Confidential information or Attorneys' Eyes Only information and remaining subject
26 to this Protective Order, and all photocopies thereof, shall, upon request, be returned to
27 the Designating Entity or destroyed (at the option of the party in custody of the
28 documents in question), except that neither party shall be obliged to return any

1 produced documents or produced things (or photocopies thereof) that were admitted
2 into evidence at trial. The outside counsel for each party shall also be entitled to retain
3 all pleadings, motion papers, discovery responses, deposition transcripts, legal
4 memoranda, correspondence, and any related exhibits. Nothing herein shall prevent
5 each party's counsel from retaining its work product.

6 30. This Order is entered without prejudice to the right of any party to apply
7 to the Court at any time for additional protection, or to relax or rescind the restrictions
8 of this Order, when convenience or necessity requires.

9 31. The obligations of this Order shall survive the termination of the action
10 and continue to bind the parties.

11 By: Mark P. Wine
12 Date: 2-1-05

13 Donald L. Morrow, SBN 66922
14 PAUL, HASTINGS, JANOFSKY &
15 WALKER LLP
16 695 Town Center Drive, 17th Floor
17 Costa Mesa, CA 92626
18 Telephone: (714) 668-6200
19 Facsimile: (714) 979-1921

20 John M. Benassi, SBN 074137
21 Stephen K. Korniczkny, SBN 135532
22 S. Christian Platt, SBN 199318
23 Joseph M. Warren, SBN 222870
24 PAUL, HASTINGS, JANOFSKY &
25 WALKER LLP
26 3579 Valley Centre Drive,
27 San Diego, CA 92130
28 Telephone: (858) 720-2500
 Facsimile: (858) 720-2555

Attorneys for Plaintiff and Counter-
Defendant, ICU MEDICAL, INC.

By: David D. Headrick
Date: 2/1/05

Mark P. Wine, SBN 189897
Christopher Bright, SBN 206273
McDERMOTT WILL & EMERY LLP
18191 Von Karman Avenue, Suite 400
Irvine, California 92612
Telephone: (949) 851-0633
Facsimile: (949) 851-9348

Timothy J. Malloy, *Pro Hac Vice*
David D. Headrick, *Pro Hac Vice*
Eligio C. Pimentel, *Pro Hac Vice*
Dennis H. Jaskoviak, *Pro Hac Vice*
McANDREWS, HELD & MALLOY,
LTD.
500 West Madison Street, 34th Floor
Chicago, Illinois 60661
Telephone: (312) 775-8000
Facsimile: (312) 775-8100

Attorneys for Defendant and Counter-
Plaintiff, ALARIS MEDICAL
SYSTEMS, INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 2-9-, 2005

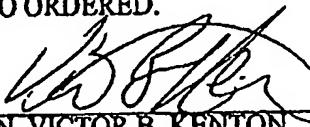

HON. VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

SCANNED

ICU MEDICAL, INC., a Delaware corporation,

Plaintiff,

v.
ALARIS MEDICAL SYSTEMS, INC.,
a Delaware corporation,

Defendant.

11 ALARIS MEDICAL SYSTEMS, INC.,
a Delaware corporation,

Counter-Plaintiff,

13 ICU MEDICAL, INC., a Delaware
14 corporation.

15 Counter-Defendant.

CASE NO. SA CV 040689 AHS (VBKx)

UNDERTAKING CONCERNING DESIGNATED MATERIAL

I, _____, declare under the penalty of perjury under the laws
of the United States that:

- 19 1. My address is _____.

20 2. My present employer is _____.

21 3. My present occupation or job description is _____.

4. I have received and carefully read a copy of the Protective Order entered
in the above-captioned litigation, and I understand its terms and conditions.

25 5. I agree to be bound by and to comply with all the terms of the Protective
26 Order, and by such other orders as the Court may issue regarding the confidential
27 treatment to be accorded documents and other materials in this litigation.

28 6. Specifically, I agree to hold in confidence and not to disclose to any

SA CV 04-0689 AHS (VBKx)

-1-

**UNDERTAKING CONCERNING
STIPULATED PROTECTIVE ORDER**

1 person not similarly bound by the Protective Order any Confidential information or (if
2 applicable) Attorneys' Eyes Only information disclosed to me in the course of this
3 litigation.

4 7. I agree to return all documents containing Confidential information or (if
5 applicable) Attorneys' Eyes Only information to outside counsel by whom I have been
6 retained at the conclusion of this litigation. SIGNED

7 8. I acknowledge that the Court may sanction me in the event that I violate
8 the provisions of the Protective Order, and I hereby agree to submit to the jurisdiction
9 of this Court for said purpose.

10
11 Dated: _____

12
13 Signature

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 10

NOV. 3. 2005 1:46PM A & A LEGAL SERVICE 6506974640

NO. 2810 P. 2

1 Mark P. Wine, SBN 189897
2 Christopher Bright SBN 206273
3 McDERMOTT WILL & EMERY LLP
4 18191 Von Karman Avenue, Suite 400
5 Irvine, California 92612
6 Telephone: (949) 851-0633
7 Facsimile: (949) 851-9348
8
9 Timothy J. Malloy, Pro Hac Vice
10 David D. Headrick, Pro Hac Vice
11 Scott P. McBride, Pro Hac Vice
12 McANDREWS, HELD & MALLOY, LTD.
13 500 West Madison Street, 34th Floor
14 Chicago, Illinois 60661
15 Telephone: (312) 775-8000
Facsimile: (312) 775-8100

10 Attorneys for Defendant
11 ALARIS MEDICAL SYSTEMS, INC.

12 James Pooley, SBN 058041
13 Kimberly N. Van Voorhis, SBN 197486
14 Marc David Peters, SBN 211725
15 MILBANK, TWEED, HADLEY & McCLOY
16 Five Palo Alto Square, 7th Floor
17 3000 El Camino Real
18 Palo Alto, CA, 94306-2109
19 Telephone: (650) 739-7000
20 Facsimile: (650) 739-7100

21 Attorneys for Plaintiff ICU MEDICAL, INC.

NOTE CHANGES MADE BY THE COURT.

FILE VIA FAX

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

21 ICU MEDICAL, INC.,
22 a Delaware corporation,

23 Plaintiff,

24 v.

25 ALARIS MEDICAL SYSTEMS, INC.,
26 a Delaware corporation,

27 Defendant.

28 AND RELATED COUNTERCLAIMS

PAT#2401363 DOCKETED ON CM

NOV 10 2005

RY 082

CASE NO. SA CV 040689 AHS (VBKx)

JOINT STIPULATION AND
PROPOSED ORDER TO MODIFY
THE OCTOBER 4, 2004
SCHEDULING ORDER

Judge: Hon. Alicemarie H. Stotler

Discovery Cutoff Date: November 4, 2005

Pretrial Conference Date: April 24, 2006

Trial Date: May 23, 2006

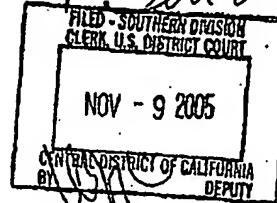
New Final Pretrial Conference Date: 8/28/06, at 2:00 p.m.

New Jury Trial Date: 10/03/06, at 9:00 a.m.

STIPULATION AND PROPOSED ORDER
TO MODIFY THE OCT. 4, 2004
SCHEDULING ORDER

Case No. SA CV 040689 AHS (VBKx)

L-Sent



LODGED

2005 NOV - 3 PM 2:43

EXHIBIT 10
Page 1 of 7

1 Pursuant to Central District Local Rule 7-1, Plaintiff and Counter-defendant
2 ICU Medical, Inc. and Defendant and Counter-plaintiff ALARIS Medical Systems,
3 Inc. (together the "Parties") submit this joint stipulation relating to the Scheduling
4 Order dated October 4, 2004.

5 WHEREAS, ICU brought this action related to four patents relating to
6 medical connectors and is presently asserting a total of 39 claims from these four
7 patents against ALARIS's SmartSite® and SmartSite® Plus medical connectors;

8 WHEREAS, this case is currently set for trial on May 23, 2006, with a final
9 pretrial conference scheduled for April 24, 2006;

10 WHEREAS, the fact discovery cutoff is currently set for November 4, 2005;

11 WHEREAS, the Counterclaimant/Plaintiff's Expert Disclosure is currently
12 set for November 11, 2005, the Respondent/Defendant's Expert Disclosure is
13 currently set for December 16, 2005, Counterclaimant/Plaintiff's Rebuttal Report
14 is currently set for January 20, 2006, and the Designation of Experts Cut-Off is
15 February 10, 2005;

16 WHEREAS, the Court granted ICU's request to add three United States
17 Patents (for a total of four asserted) to this case after the entry, on October 4, 2004,
18 of the case management schedule the parties have been operating under in this
19 case;

20 WHEREAS, this is the parties' first request for modification of the present
21 schedule;

22 WHEREAS, the parties negotiated the terms of and conducted a day long
23 mediation with principals from each party in April 2005, which did not result in
24 settlement;

25 WHEREAS, the parties have been diligently conducting discovery in this
26 case, including:

27

28 PAI:224013677

-2-

STIPULATION AND [PROPOSED] ORDER
TO MODIFY THE OCT. 4, 2004
SCHEDULING ORDER
Case No. SA-CV-040689-AHS (VBK)

EXHIBIT 10
Page 2 of 7

- the parties have voluntarily adopted a modified version of the Northern District of California's Patent Local Rules ("Modified Patent Local Rules") to help guide discovery timelines and disclosure of each party's contentions in this patent case, and have served their disclosures pursuant to this agreement, amounting to hundreds of pages of disclosure by the parties—all of which the parties hope will ultimately streamline these issues for the Court;
 - ALARIS has served and ICU has responded to approximately one hundred and nine (109) document requests and fifteen (15) interrogatories;
 - ICU has served and ALARIS has responded to approximately one hundred and forty-two (142) document requests, one hundred and ninety-two (192) requests for admission and twenty-two (22) interrogatories;
 - ALARIS has produced to ICU about 155,049 pages of documents;
 - ICU has produced to ALARIS about 91,692 pages of documents;
 - ICU has served a 753 entry privilege log on ALARIS;
 - ALARIS has served a 222 entry privilege log on ICU;
 - ALARIS has served on ICU its initial deposition notices on August 26 and September 8; and
 - ICU has served on ALARIS its initial deposition notices on September 16 and September 22, 2005.

WHEREAS, the parties have initiated a significant amount of discovery well in advance of the discovery cutoff, but the parties believe, despite the parties' diligent efforts, that they will be unable to complete under the present schedule the served written and noticed deposition discovery;

.3 . STIPULATION AND (PROPOSED) ORDER
TO MODIFY THE OCT. 4, 2004
SCHEDULING ORDER
Case No. SA CV 040689 AHS (VEKs)

1 WHEREAS, ICU wishes to pursue discovery related to its disqualification
2 concerns, and ALARIS objects to such discovery;

3 WHEREAS, ALARIS wishes to proceed with discovery on the merits of this
4 case, and ICU objects to such discovery until its disqualification concerns are
5 resolved;

6 WHEREAS, ICU is hopeful that the modification of the dates currently
7 scheduled, as set forth below, will provide the opportunity to work with ALARIS
8 to resolve its disqualification concerns while minimizing the burden on the Court,
9 and complete the parties' already served and noticed discovery, although it cannot
10 be certain that additional time will not be necessary;

11 WHEREAS, ALARIS believes that a modest modification of the dates
12 currently scheduled, as set forth below, will allow the parties an opportunity to
13 complete already served written discovery and noticed deposition discovery;

14

15 ////

16 ////

17 ////

18 ////

19 ////

20 ////

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27

28 PA1-24013637

.4 -

STIPULATION AND [PROPOSED] ORDER
TO MODIFY THE OCT. 4, 2004
SCHEDULING ORDER
Case No. SA CV 040689 AHS (VBK)

EXHIBIT 10
Page 4 of 7

1 IT IS HEREBY STIPULATED by and between the Parties, and through
 2 their respective attorneys of record, that good cause exists to modify the deadlines
 3 set forth in the October 4, 2004, Scheduling Order to the dates indicated below.

EVENT	DATE MOVED	
	FROM	TO
Fact Discovery Cut-Off	11-4-2005	3-17-2006
Counterclaimant/Plaintiff's Expert Disclosure	11-11-2005	3-24-2006
Respondent/Defendant's Expert Disclosure	12-16-2005	4-28-2006
Counterclaimant/Plaintiff's Rebuttal Report	1-20-2006	6-2-2006
Designation of Experts Cut-Off	2-10-2006	6-16-2006
Summary Judgment Cut-Off (filing deadline)	2-15-2006	6-23-2006
Final Pretrial Conference	4-24-2006	On or about Monday, 8-21-2006 at 2:00 p.m., or other date set by the Court
Jury Trial	5-23-2006	On or about Tuesday, 9-26-2006 at 2:00 p.m., or other date set by the Court

Dated: November 3, 2005
 McANDREWS, HELD &
 MALLOY, LTD.

Dated: November 3, 2005
 MILBANK, TWEED, HADLEY &
 MCCLOY LLP

By:

Timothy J. Malloy
 David D. Headrick
 Scott P. McBride
 500 West Madison St., 34th Flr.
 Chicago, Illinois 60661
 Telephone: (312) 775-8000
 Facsimile: (312) 775-8100
 Attorneys for Defendant,
 ALARIS MEDICAL
 SYSTEMS, INC.

James Pooley
 Kimberly N. Van Voorhis
 Marc David Peters
 Five Palo Alto Square, 7th Floor
 3000 El Camino Real
 Palo Alto, CA 94306-2109
 Telephone: (650) 739-7000
 Facsimile: (650) 739-71000
 Attorneys for Plaintiff,
 ICU MEDICAL, INC.

PAI 524013637

.5.. STIPULATION AND [PROPOSED] ORDER
 TO MODIFY THE OCT. 4, 2004
 SCHEDULING ORDER
 Case No. SA CV 040689 AHS (VBK)

NOV. 3 2005 1:47PM A & A LEGAL SERVICE 6506974640

NO. 2810 P. 7

FROM McANDREWS, HELD, & MALLOY

(THU) 11. 3' 05 14:27/ST. 14:20/NO. 4861050804 P 7

1 IT IS HEREBY STIPULATED by and between the Parties, and through
2 their respective attorneys of record, that good cause exists to modify the deadlines
3 set forth in the October 4, 2004, Scheduling Order to the dates indicated below.

5	EVENT	DATE MOVED	
		6 FROM	7 TO
6	Fact Discovery Cut-Off	11-4-2005	3-17-2006
7	Counterclaimant/Plaintiff's Expert Disclosure	11-11-2005	3-24-2006
8	Respondent/Defendant's Expert Disclosure	12-16-2005	4-28-2006
9	Counterclaimant/Plaintiff's Rebuttal Report	1-20-2006	6-2-2006
10	Designation of Experts Cut-Off	2-10-2006	6-16-2006
11	Summary Judgment Cut- Off (filing deadline)	2-15-2006	6-23-2006
12	Final Pretrial Conference	4-24-2006	On or about Monday, 8-21- 2006 at 2:00 p.m., or other date set by the Court
13	Jury Trial	5-23-2006	On or about Tuesday, 9-26- 2006 at 2:00 p.m., or other date set by the Court

18
19 Dated: November 3, 2005
20 McANDREWS, HELD &
21 MALLOY, LTD.

22 By: David D. Headrick
23 Timothy J. Malloy
24 David D. Headrick
25 Scott P. McBride
26 500 West Madison St., 34th Flr.
27 Chicago, Illinois 60661
28 Telephone: (312) 775-8000
Facsimile: (312) 775-8100
Attorneys for Defendant,
ALARIS MEDICAL
SYSTEMS, INC.

Dated: November 3, 2005
MILBANK, TWEED, HADLEY &
MCCLOY LLP

By: Marc D. Peters
James Poojary
Kimberly N. Van Voorhis
Marc David Peters
Five Palo Alto Square, 7th Floor
3000 El Camino Real
Palo Alto, CA 94306-2109
Telephone: (650) 739-7000
Facsimile: (650) 739-71000
Attorneys for Plaintiff,
ICU MEDICAL, INC.

PAT#24013637

.5 -

STIPULATION AND (PROPOSED) ORDER
TO MODIFY THE OCT. 4, 2004
SCHEDULING ORDER
Case No. SA CV 040689 ABS (VBK)

EXHIBIT 10
Page 6 of 7

ORDER

1 Pursuant to stipulation, and for good cause appearing therefor, this Court
 2 modifies the Case Management Schedule as set forth here:

4	EVENT	DATE MOVED	
		FROM	TO
5	Fact Discovery Cut-Off	11-4-2005	3-17-2006
6	Counterclaimant/Plaintiff's Expert Disclosure	11-11-2005	3-24-2006
7	Respondent/Defendant's Expert Disclosure	12-16-2005	4-28-2006
8	Counterclaimant/Plaintiffs Rebutial Report	1-20-2006	6-2-2006
9	Designation of Experts Cut-Off	2-10-2006	6-16-2006
10	Summary Judgment Cut- Off (filing deadline)	2-15-2006	6-23-2006
11	Final Pretrial Conference	4-24-2006	<i>August 28, 2006, at 2:00 p.m.</i> <i>On or about Monday, 8/28/</i> <i>2006 at 2:00 p.m., or other</i> <i>date set by the Court</i>
12	Jury Trial	5-23-2006	<i>On or about Tuesday, 9/26/</i> <i>2006 at 2:00 p.m., or other</i> <i>date set by the Court</i>

17
 18 IT IS SO ORDERED,

19 Dated: November 9, 2005 By: _____

20
 21 
 The Honorable Alicemarie H. Stotler

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) years and not a party to this action. My business address is 2049 Century Park East, 34th Floor, Los Angeles, California 90067 and I am employed in the office of a member of the bar of this Court at whose direction this service was made.

On MARCH 7, 2006, I served the following document(s) described as: **DECLARATION OF DAVID D. HEADRICK IN SUPPORT OF AND IN OPPOSITION TO DEFENDANT ALARIS MEDICAL SYSTEMS, INC.'S MOTION TO COMPEL ICU'S RESPONSE TO ALARIS'S REQUESTS FOR PRODUCTION NOS. 9, 10, 11, 23, 27, 38, 39**

- 8 **BY MAIL** as follows: I am readily familiar with the firm's practice of collection and
9 processing of correspondence for mailing with the United States Postal Service. Under
10 that practice the correspondence was deposited with the United States Postal Service on
11 the same day this declaration was executed in the ordinary course of business. Under that
12 practice the envelope(s) was (were) sealed, and with postage thereon fully prepaid,
13 placed for collection and mailing on this date in the United States Mail at Los Angeles,
14 California addressed as set forth below.

15 **BY PERSONAL SERVICE** as follows: I caused such envelope(s) to be delivered by
16 hand to the addressee(s) at the address set forth below by First Legal Support Messenger
17 Service.

18 **BY FEDERAL EXPRESS** as follows: I placed the document(s) listed above with fees
thereon fully prepaid for deposit with Federal Express (next business day delivery), this
same day following ordinary business practices to the address(es) set forth below.

19 **BY FACSIMILE TRANSMISSION** as follows: I caused the above-referenced
20 document(s) to be transmitted by facsimile to its intended recipient(s) at the following
21 facsimile number(s) before 5:00 p.m.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on **MARCH 7, 2006**, at Los Angeles, California.

- 21 **FEDERAL:** I declare that I am employed in the office of a member of the bar of this court at whose direction service was made.

PLEASE SEE ATTACHED SERVICE LIST


SHAYNA FISCHER

1 **SERVICE LIST**

2 **James Pooley, Esq.**
3 **POOLEY & OLIVER, LLP**
4 **Five Palo Alto Square, 7th Floor**
5 **3000 El Camino Real**
6 **Palo Alto, CA 94306**
7 **T: 650-739-7000**
8 **F: 650-739-7100**

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**This Page is Inserted by IFW Indexing and Scanning
Operations and is not part of the Official Record**

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- BLACK BORDERS**
- IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- FADED TEXT OR DRAWING**
- BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- SKEWED/SLANTED IMAGES**
- COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- GRAY SCALE DOCUMENTS**
- LINES OR MARKS ON ORIGINAL DOCUMENT**
- REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- OTHER:** _____

IMAGES ARE BEST AVAILABLE COPY.

As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.